Supreme Court, U.S.
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OFFICE OF THE CLERK

No.

In The
Supreme Court of the United States

BENJAPON SAKKARAPOPE,
Petitioner

V.

THE BOARD OF REGENTS OF
WASHINGTON STATE UNIVERSITY,
AND
THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF EDUCATION,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Volume I

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QUESTIONS PRESENTED FOR REVIEW

1. Do the provisions of 20 U.S.C. §1232g(a)(1); §1232g(f) and (g); and 34 C.F.R 99.60 et. seq. create a "federal right to inspect and review" education records" and a **"federal due process right"** or an **"administrative due process right"**? To the extent, are such rights protected under the Fourteenth Amendment and actionable against the Board of Regents, or a governing body, of an educational institution and/or the Secretary of the United States Department of Education pursuant to 42 U.S.C. §1983 where the rights have been deprived or violated by the decisions and/or actions of the designated officials under the Secretary or the Board of Regents?

2. Does the Court of Appeals' decision that "the district court also properly dismissed Sakkarapope's claims against the Secretary of Education because FERPA does not create a private right of action," apply and interpret *Gonzaga v. Doe*, 536 U.S. 273 (2002) beyond the scope of the original opinion of the Supreme Court because: (i) the Court's opinion and analysis in *Gonzaga v. Doe* was limited to the provision of §1232g(b), (ii) Gonzaga University is an educational institution, but the Secretary of the United States Department of Education is not, and (iii) the instant case is involved with §1232~~g(a)(1) and~~ the failure of the Secretary to perform its administrative duty under FERPA, 20 U.S.C. §1232g(f) and (g) to secure the "federal right to inspect and review" education records and **"federal due process right"** or an **"administrative due process right"**?

3. Does the instant case fall within the exception of *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 426, 432, and *Wilder v. Virginia Hospital Assn.*, 496 U.S. 498, 522-523, because the Board of Regents and the

Secretary violate and fail to secure the "federal right to inspect and review" education records and **"federal due process right"** or an **"administrative due process right,"** and Sakkarapope lackes any federal review mechanism to recourse from the Secretary's failure to perform its official duty?

4. Does Sakkarapope, or a student, have "a right to appeal or otherwise contest the FPCO's decision with respect to complaints filed under FERPA" pursuant to the federal Administrative Procedure Act (APA), 5 USC 554, 555, where the Secretary of the United States Department of Education closes his FERPA complaints "without a finding"? If such right exists, is it protected under the due process clause of the Fourteenth Amendment and actionable pursuant to 42 U.S.C. §1983?

5. Does an educational institution have authority to alter the jurisdiction of FERPA complaint to be filed in the state superior court and is the state trial court's Order Granting Respondents' Motion for Summary Judgment entered March 5, 2004, unconstitutional because: (i) a summary judgment proceeding is not authorized under the state APA, RCW 34.05 and (ii) the state court does not have jurisdiction to adjudicate FERPA complaints?

6. Is the District Court's order of June 22, 2004 unconstitutional because the proceedings in the district court violate Sakkarapope's due process right: (i) the District Court granted the BORs' motion summary judgment based on the state trial court order of March 5, 2004, and (ii) the District Court's other orders limited Sakkarapope's freedom to act in the proceedings, (iii) the District Court granted a summary judgment on behalf of the Secretary where it did not move for a partial summary judgment?

7. Is the Court of Appeals' decision that "...even if the State of Washington has waived its sovereign immunity to 42 U.S.C. §1983 actions in its own courts, it has not done so in the federal courts," *McConnell v. Critchlow*, 661 F.2d 116, 117 (9th Cir. 1981) unconstitutional because: (i) FERPA does not authorize the state court to hear any FERPA complaint, (ii) the state statue of RCW 4.92.010 is unconstitutional as to it violates the equal protection clause of the Fourteenth Amendment? Is a federal forum under this instant case permitted?

8. Does the Board of Regents of Washington State University immune from a suit in a federal court under the Eleventh Amendment where a FERPA due process right guaranteed by the Fourteenth Amendment, if exists, is violated and has been deprived?

9. Does the Court of Appeals' decision that "[t]he district court properly dismissed Sakkarapope's claims against defendant Board of Regents because the Board is not a "person" within the meaning of 42 U.S.C. §1983," *Thompson v City of Los Angeles*, 885 F. 2d 1439, 1443 (9th Cir. 1989), conflict with the statute of the State of Washington, RCW 1.16.080(1)?

10. Did Howard Grimes' actions violate and deprive Sakkarapope's due process rights guaranteed by the Fourteenth Amendment?

11. Do the doctrines of res judicata and collateral estoppel apply to the instant case?

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I. JURISDICTIONAL STATEMENTS

1. The United States Department of Education entered its decision denying Sakkarapope's FERPA Complaints pursuant to 20 U.S.C §1232g; 34 C.F.R. 99, and an application for adjudication pursuant to Administrative Procedure Act (APA) 5 U.S.C. 554. The Secretary of the United States Department of Education rendered its final decision by the Director of the Family Policy Compliance Office (FPCO) on January 20, 2004. (Appendix (App.) at 64-70)

2. The original Complaint was filed in the United States District Court, Eastern District of Washington (Spokane) on February 24, 2004.

3. The District Court has jurisdiction under Civil Rights Act 42 U.S.C. §1983; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C §1232g; 34 C.F.R. 99, and WAC 504-21; and Administrative Procedure Act (APA) 5 U.S.C. 554; 5 U.S.C. 555.

4. The District Court entered a final judgment on June 22, 2004, by Senior Judge Justin L. Quackenbush.

5. A Motion for Sanction was served May 25, 2004, and the District Court entered an order deciding Motion for Sanction on June 28, 2004.

6. A Notice of appeal was filed July 19, 2004. The appeal is from a final order of the District Court on Motion for Summary Judgment that disposes of all parties' claims. The Court of Appeals for the Ninth Circuit has jurisdiction to review a final order of the District Court. FRAP 3.

6. The Court of Appeals for the Ninth Circuit rendered its decision in an unpublished Memorandum filed February 22, 2006, by a panel of Circuit Judges, FERNANDEZ, RYMER, and BYBEE.

7. A petition for panel rehearing and rehearing en banc was filed April 6, 2006. The Court of Appeals for the Ninth Circuit rendered its decision denying the petition for panel rehearing and rehearing en banc on June 8, 2006, and a final judgment was entered June 27, 2006.

8. This PETITION FOR WRIT OF CERTIORARI is from a final judgment of the United States Court of Appeals for the Ninth Circuit affirming the District Court on Motion for Summary Judgment that disposes of all parties' claims. This Supreme Court has jurisdiction to review a final judgment of the Court of Appeals. 28 U.S.C §1254

II. CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THE CASE

1. The Fourteenth Amendment.
2. The Eleventh Amendment.
3. 20 U.S.C §1232g; 34 C.F.R. 99, and WAC 504-21. (App. at 99-122)
4. Federal Administrative Procedure Act (APA), 5 U.S.C. 554; 5 U.S.C. 555. (App. at 72-80)
5. State Administrative Procedure Act (APA), RCW 34.05. (App. at 81-95)
6. Civil Rights Act, 42 U.S.C. §1983.
7. WAC 504-04. (App. at 96-98)
8. RCW 4.92 (Actions and claims against state).

> RCW 4.92.010: Where brought — Change of venue. Any person or corporation having any claim against the state of Washington shall have a right of action against the state in the superior court. The venue for such actions shall be as follows: (1) The county of the

residence or principal place of business of one or more of the plaintiffs; (2) The county where the cause of action arose; (3) The county in which the real property that is the subject of the action is situated; (4) The county where the action may be properly commenced by reason of the joinder of an additional defendant; or (5) Thurston county.

Actions shall be subject to change of venue in accordance with statute, rules of court, and the common law as the same now exist or may hereafter be amended, adopted, or altered.

Actions shall be tried in the county in which they have been commenced in the absence of a seasonable motion by or in behalf of the state to change the venue of the action.

Notes: Severability -- 1963 c 159: "If any provision of this act, or its application to any persons or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 159 § 12.] Venue: Chapter 4.12 RCW.

9. RCW 1.16.080(1): "Person" — Construction of "association," "unincorporated association," and "person, firm, or corporation" to include a limited liability company.

(1) The term "person" may be construed to include the United States, this state, or any state or territory, or any public or private corporation or limited liability company, as well as an individual.

(2) Unless the context clearly indicates otherwise, the terms "association," "unincorporated association," and "person, firm, or corporation" or substantially identical terms shall, without limiting the application of any term to any other type of legal entity, be construed to include a limited liability company.

Notes: Reviser's note: This section is a part of 1891 c 23 § 1. The introductory phrase of that section provides: "The following provisions relative to the construction of statutes shall be rules of construction and shall constitute a part of the code of procedure of this state:" Criminal proceedings, person defined: RCW 9A.04.110; Declaratory judgments, person defined: RCW 7.24.130; Eminent domain by cities, person defined: RCW 8.12.020; Notice to alien property custodian, person defined: RCW 4.28.340; Wrongful death, person defined: RCW 4.20.005.

10. *Gonzaga v. Doe*, 536 U.S. 273, 287 (2002).

III. STATEMENTS OF THE CASES AND FACTS[1]

1. In the year 2000, Sakkarapope had a dispute with Washington State University (University/WSU) in regard to the IIDP preliminary examination. Not only the University refused to disclose the records of the exam on the portion it claimed that Sakkarapope received failing grades and that of the appeal process, destroyed the records[2], and did not properly afford him a due process hearing under FERPA, but also Howard Grimes premeditatedly retaliated Sakkarapope by issuing a series of memoranda leading to the termination of January 31, 2003 from his joint master degree program in violation of his due process right. No hearing was afforded.

After Howard Grimes was appointed to Chair of the CGSRR and later the Dean of the Graduate School and while Sakkarapope was out of the country for his father-in-law funeral, Grimes, quietly, arbitrarily dropped Sakkarapope from the University system on 10/22/2002 without informing the student and consulting with his academic advisor and department chair. (Ct. Rec. 30 Exh. E). Grimes had begun searching for information to serve his personal purpose since

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[1] *See also*, additional details in Appendix at 138-145, 168-172, 177-179, 191-203, 253-269, 272-311, and 322-348..

[2] Per Kenneth Duft's email to Kirsten Pauli dated June 7, 2002.

on or about 8/26/20, with handwritten note, "Where is he—how did he get there." With a long campaigning of official misconduct, the termination of January 31, 2003, was arbitrarily again made by Grimes who has personal interest in the outcome of the termination, and then submitted its decision to the Immigration Authority. In cooperation with Grimes, Mary Furnari, an international student advisor, asked Mr. Danial Hanson, an immigration officer, to initiate the removal proceeding in her email of 6/9/2003:

> ...This student has been making numerous requests for evidence based on public records law at great expense in time and energy to university personnel. I wonder when a student is terminated in SEVIS, what does BCIS or ICE do about that student? Are they referred to Investigations? Can we hope that BICS or ICE might act on this student anytime soon?...

Mr. Hanson replied in his email of June 10, 2003: "I'll forward the case to Investigations." Subsequently, a removal proceeding[3] was initiated and the hearing was held on April 22, 2004.

Such termination and conspiracy are constituted retaliation by the University's officials while Sakkarapope was seeking available administrative relief. The agency's notes also indicate:

> (A) Dated 12/2/02, "Howard Grimes in exercise room. He may be willing to let Ben continue, but the letters (regarding appeal) have to stop."
>
> (B) Dated 12/6/02, "and earlier conversation: Hao Zhang (major professor) Believes that Ben is OK as far as degree, making 'normal progress.' Was surprised to hear that Grad School believes he is

[3] A Petition for Review of the Board of Immigration Appeals (BIA) has been pending in the Court of Appeals for the Ninth Circuit. A motion for consolidation of the two cases was denied.

finished at WSU. Knows about Ben's attempt to appeal results of comprehensive exams...."
(C) Dated 12/6/02, "Nancy Intermill, prog. Coordinator in Statistics says as far as they know Ben is OK to continue his program. Have not received anything from Grad School informing them otherwise....."
(D) Dated 4/11/03, "Zhang-.....reporting him if he could be persuaded to give up his appeal effort for Phd and be allowed to stay and finish M.S.? He can ask Ben next Thursday. I said I would check w/ Mary F." (Ct. Rec. 30 Exh. C).

After unsuccessful attempts through the University's President, an appeal before the Board of Regents was filed on January 13, 2003, and Provost Bates denied access to the Board on behalf of the Board. (Ct. Rec. 30 Exh. D).

To this date, the University has not yet disclosed the examination on the portions it claimed that Sakkarapope received failing grades and the records in the appeal process. Further, despite the FPCO already provided an interpretation of FERPA that:

> FERPA does permit the nonconsensual disclosure of education records in certain limited circumstances, such as when the disclosure is made in compliance with a lawfully issued subpoena or court order. CFR § 99.31(a)(9).... unless the subpoena is a Federal grand jury subpoena or other subpoena issued for a law enforcement purpose, and the subpoena contains a provision that the eligible student must not be informed of the existence of the subpoena, the institution must make a reasonable effort to notify the eligible student in advance of compliance with the subpoena. This permits the eligible student to seek

protective action from the court, such as limiting the scope of the subpoena...., (App. at 316-317),

WSU moved in the state Superior court to quash Sakkarapope's subpoenas of the records and sealed the records of the examinations in disputes. (App. at 26-35, 272-311, 336-348).

2. After unsuccessful attempts to exercise his rights to inspect and review his education records, Sakkarapope requested for a hearing to release his education records on December 5, 2001. Instead of the "Registration and Records Committee" as designated in the Committee Manual[4], the Student Records Committee ("SRC"), an ad hoc committee, was formed to hear FERPA issues under WAC 504-21-040, (Ct. Rec. 30; App. at 99-109), and prohibited an advisor to directly address the committee or advocate on his behalf. Despite of Sakkarapope's objection to the SRC's authority, the SRC arbitrarily conducted a hearing and rendered its slam-dunk decision of April 5, 2002, stating "the University has fully complied with your request for the release of education records under FERPA." (App. at 53-58)

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[4] The Student Records Committee did not exist prior, but the University delegated its duties to **REGISTRATION AND RECORDS COMMITTEE**, where explicitly stipulated its functions, composition and responsibilities as: (i) **Functions:** (1) Serves in an advisory capacity to the Registrar in matters pertaining to registration and records; (2) Makes recommendations to the Registrar and/or Vice Provost for Student Affairs on policies governing registration and records; (3) Reviews unusual requests for information and for assisting in the interpretation of WAC 504-21, University Policy on Student Education Records; (4) Hears appeals as defined in WAC 504-21-040; and (5) Acts in the capacity of a hearing panel as described in the Family Educational Rights and Privacy Act of 1974 and the Privacy Rights of Parents and Students published by HEW on June 17, 1976; (ii) **Composition and Tenure:** (1) Seven faculty, with three-year terms; (2) One graduate and two undergraduate students, with one-year terms; and (3) Registrar; representatives from the Graduate School; and the Office of the Controller; and (iii) **Responsible to**: The Provost, through the Vice Provost for Student Affairs.

3. On July 19, 2002, the University notified Sakkarapope's right to file a FERPA complaint with the Family Policy Compliance Office ("FPCO") in which he later did on September 27, 2002. (App. at 59-60, 322-335) Because the FPCO did not perform its FERPA duty as prescribed in 34 C.F.R 99.60 et. seq., on December 5, 2003, Sakkarapope then filed a Petition for Adjudication before the Secretary pursuant to 5 USC 554, 555 and 34 CFR 99.60 et seq. to enforce the FERPA federal due process. The Petition was denied on January 20, 2004, stating that:

> ...we are closing this matter without a finding... you do not have a right to an adjudication by the Secretary under the APA and that no further action will be taken by the Department regarding your requested adjudication.....you do not have a right to appeal or otherwise contest this Office's decision with respect to complaints filed under FERPA. (App. at 64-70)

A civil complaint was filed in the district court on February 24, 2004. (App. at 123-132)

The decision of the Secretary of the United States Department of Education (Secretary) raised a federal question sought to be reviewed in this court whether the decision and action regarding FERPA is protected under the federal Administrative Procedure Act. 5 USC 554, 555. To the extent, whether a right to adjudication pursuant to the federal APA exists and such denial violates Sakkarapope's due process right guaranteed by the Fourteenth Amendment.

4. In the related case in the state courts, a Petition for Review of the University's decisions and actions under the state APA, RCW 34.05, was earlier filed separately in the state court, in which among other things the court was initially asked to review a procedural matter of a brief

adjudicative proceeding[5], not a FERPA complaint. Due to the misrepresentation of the petition by the state court and WSU's counsel, Sakkarapope later withdrew those FERPA portions as supplemental jurisdiction to the district court. (App. at 270-271) Despite of his objections, the state court arbitrarily entered a summary judgment order of March 5, 2004, on the FERPA portions anyway. (App. at 36-52)

In the state court proceeding, a federal question sought to be reviewed in this court was raised whether the University's provost has authority to alter the jurisdiction of FERPA complaint to be filed in the state superior court. (App. at 59-62).

To the extent, whether the state superior court has jurisdiction to enter its order of March 5, 2004 regarding FERPA complaint and whether such order is unconstitutional as to FERPA does not confer the jurisdiction to the state court and it violates Sakkarapope's due process right under the Fourteenth Amendment. (App. at 36-52, 224-271)

Further, a federal question sought to be reviewed in this court was raised whether the state trial court order of March 5. 2004[6], is unconstitutional as to the state statute of RCW 34.05 does not authorize the trial court to hear such petition in a summary judgment proceeding and such order violated Sakkarapope's due process right under the Fourteenth Amendment. RCW 34.05.590 (App. at 95);

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[5] WSU adopted a brief adjudicative proceeding under RCW 34.05 to hear FERPA complaint pursuant to WAC 504-04-010; WAC 504-21. (App. at 96-109) The adoption of the procedure creates a confusion of jurisdiction of the courts. The Petition for Review in the state superior court initially was asked the court to review on procedural ground, not a FERPA complaint to be reviewed whether the University has complied with FERPA, which was rested within the FPCO's jurisdiction and the FERPA complaint was already filed with the FPCO in a separate action and jurisdiction.

[6] A petition for review of the state trial court 's order of March 5. 2004, has been pending in the state Supreme Court since February, 2006.

Alpine Lakes Prot. Soc'y v. Dep't of Natural Res., 102 Wn. App.1, 14, 979 P.2d 929 (1999).

4. In the District Court, the Board of Regents of Washington State University (BOR) moved for a partial summary judgment based on the state trial court's order of March 5, 2004. At its own initiative, the district court entered an order prohibiting of filing and an Order to Show Cause on the question of the applicability of the *Rooker-Feldman* doctrine, then granted the BOR's summary judgment without oral argument and resetting a summary judgment hearing date, as well as disposed of all claims. The Secretary did not move for a judgment either through a joint or its own motion for summary judgment or a separate motion for dismissal, but improperly asserted its request in its reply to Motion to Show Cause. (App. at 16-23)

The District Court entered an order of June 22, 2004, granting the BOR's motion for summary judgment that disposes of all parties' claims and determined that:

> Plaintiff's claims against WSU are barred by the doctrines of res judicata and collateral estoppel. Additionally, this court finds that WSU is immune from suit under the Eleventh Amendment to the extent Plaintiff seeks monetary damages. WSU, as an arm of the state or state agency, is also not a "person" for purposes of §1983 and accordingly cannot be sued for damages under §1983. Plaintiff does not have a private right of action to bring a 42 U.S.C. §1983 suit based on violation of FERPA. (Memorandum Opinion; App. at 15)

The District Court's decision raised the important federal questions sought to be reviewed in this court directly involving with the doctrines of res judicata and collateral estoppel, the immunity under the Eleventh Amendment, the due process right under the Fourteenth Amendment, and a

private right under Section 1983 underlying a federal due process right under FERPA §1232g(a)(1); §1232g(f) and (g), in which it is directly involved with the interpretation of the Supreme Court's precedent in *Gonzaga University v. Doe*, 536 U.S. 273, 276 (2002).

To the extent that the District Court granted the BORs' motion summary judgment based on the state trial court order of March 5, 2004, a federal question sought to be reviewed in this court was raised whether the District Court's decision of June 22, 2004, is unconstitutional as it violates Sakkarapope's due process right in the district court proceeding as a backdrop of the constitutionality of the state trial court's order March 5, 2004.

5. The Court of Appeals rendered its decision in an unpublished Memorandum of opinions on February 22, 2006, affirming the district court's summary judgment decision that disposes of all parties claims with prejudice. The opinions of the Court of Appeals raised the federal questions sought to be reviewed in this court as summarized:

(1) Whether the Court of Appeals' decision that "the district court also properly dismissed Sakkarapope's claims against the Secretary of Education because FERPA does not create a private right of action. See *Gonzaga University v. Doe*, 536 U.S. 273, 287 (2002)," conflicts with the decisions of the Court of Appeals for the Second Circuit in *Taylor v. Vermont Dept's of Educ.*, 313 F.3d 768 (2nd Cir. 2002) and the Supreme Court's original opinions in *Gonzaga v. Doe*, 536 U.S. 273 (2002).

(2) Whether the Court of Appeals overlooked that the Congress did not define "the Secretary" as "an educational institution," but imposed administrative duty to enforce FERPA compliance, 20 U.S.C. §1232g(f) and (g) including a **"federal due process right"** under FERPA. The Court of Appeals did not indicate under what authority it adopted to equate "the Secretary" to "an educational institution" under FERPA.

(3) Whether the Court of Appeals overlooked that *Gonzaga* does not govern the instant case since Sakkarapope did not allege "the Secretary" violated either §1232g(a) or §1232g(b), but alleged the Secretary violated and deprived his **"federal due process right"** under §1232g(a)(1) and (g).

Where his **"federal due process rights"** were denied, Sakkarapope lacked any federal review mechanism to recourse from the Secretary's failure to perform official duty. A federal question sought to be reviewed whether this instant case falls within the exception of *Wright v. Roanoke Redevelopment and Housing Authority,* 479 U.S. 418, 426, 432, and *Wilder v. Virginia Hospital Assn.,* 496 U.S. 498, 522-523.

(4) Whether the Court of Appeals overlooked that FERPA creates "**an administrative due process right**" under §1232g(a)(1) and (g). Whether such **"federal due process right"** is guaranteed by the Fourteenth Amendment and then actionable under §1983 is a constitutional question as well as a question of exceptional importance. *Gonzaga v. Doe*, 536 U.S. 273, 122 S.Ct. 2268, 153 L. Ed. 2d. (2002); *State of Maine v. Thiboutot*, 448 U.S. 1 (1980).

(5) Whether Court of Appeals' decision that "[t]he district court properly dismissed Sakkarapope's claims against defendant Board of Regents because the Board is not a "person" within the meaning of 42 U.S.C. §1983," *Thompson v City of Los Angeles*, 885 F. 2d 1439, 1443 (9th Cir. 1989), conflicts with the statute of the State of Washington, RCW 1.16.080(1), and the opinion of the Court of Appeals for the Fifth Circuit in *United Carolina Bank v. Board of Regents of Stephen F. Austin State University,* 665 F.2d 553 (5th Cir. 1982).

(6) Whether the Court of Appeals' decision that "...even if the State of Washington has waived its sovereign immunity to 42 U.S.C. §1983 actions in its own courts, it has not done so in the federal courts," *McConnell v. Critchlow*, 661 F.2d 116, 117 (9th Cir. 1981) violates the equal

protection clause of the Fourteenth Amendment and conflicts with *Regan v. Farmers' Loan & Trust Co.*, 154 U.S. 392 (1894).

To the extent, where FERPA does not authorize the state court to hear any FERPA complaint, a federal question is raised whether the state statue of RCW 4.92.010 required Sakkarapope to suit the BOR only in the state forum is unconstitutional, and then a federal forum under this instant case is permitted.

6. The Court of Appeals entered an order denying Sakkarapope's Petition for Panel Rehearing and Rehearing En Banc June 8, 2006; a final judgment was entered June 27, 2006. (App. at 1-5, 71)

IV. ARGUMENTS

A. FERPA Creates a Federal Right to Inspect and Review" Educational Records And A "Federal Due Process Right"; The Denying Of Such Rights By The Secretary Violates And Deprive The Federal Rights Guaranteed By The Fourteenth Amendment And Falls Within The Exceptional Importance Of "Spending Clause Statute"; The Court Of Appeals' Opinion Applies And Interprets *Gonzaga v. Doe* Beyond The Scope Of The Original Supreme Court's Opinion. [Question #1-6]

The Court of Appeals' decision that "the district court also properly dismissed Sakkarapope's claims against the Secretary of Education because FERPA does not create a private right of action. *See Gonzaga University v. Doe*, 536 U.S. 273, 287 (2002)," conflicts with *Gonzaga v. Doe*, 536 U.S. 273 (2002) and *OWASSO INDE. SCH. DIST. NO. I—011 V. FALVO*, 534 U.S. 426 (2002), 233 F.3d 1203.

The U.S. Supreme Court clearly indicated that it is an open question whether FERPA provides private parties with a cause of action enforceable under §1983:

> At the outset, we note ***it is an open question whether FERPA provides private parties, like respondent, with a cause of action enforceable under §1983.*** We have granted certiorari on this issue in another case. *See Gonzaga Univ. v. Doe,* 534 U.S. __ (2002)..... In these circumstances ***we assume, but without so deciding or expressing an opinion on the question, that private parties may sue an educational agency under §1983 to enforce the provisions of FERPA here at issue. Though we leave open the §1983 question***, the Court has subject-matter jurisdiction because respondent's federal claim is not so "completely devoid of merit as not to involve a federal controversy." *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 89 (1998) (citation omitted).
>
> FERPA also requires recipients of federal funds to provide parents with a hearing at which they may contest the accuracy of their child's education records. §1232g(a)(2). The hearings must be conducted ***"in accordance with regulations of the Secretary,"*** *ibid.*, which in turn require adjudication by a disinterested official and the opportunity for parents to be represented by an attorney. 34 CFR § 99.22 (2001). *OWASSO INDEP. SCH. DIST. NO. I-- 011V. FALVO*, Supra. (Opinion) [Emphasis added]

This open question is also reflected in *Gonzaga v. Doe*, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d. (2002). The Supreme Court's opinion itself on the issue was divided. The majority held that §1232g(b)(1) does not confer federal rights enforceable through a §1983 action. *Gonzaga v. Doe*, 122 S. Ct. 2268, 2271-72 & n.2. The Court did not specifically hold either that §1232g(a) does not create individual rights enforceable by §1983, or that §1232g does not create federal due process right to adjudicate complaints

enforceable by §1983. The dissenting opinion also expresses that most federal court of appeals decided the question have concluded that FERPA creates federal rights enforceable under §1983.

The Second Circuit also expressly acknowledged the limitation of *Gonzaga*, but the court further rationally applying *Gonzaga* beyond the original analysis that:

> Although *Gonzaga*'s discussion does appear to be limited to the §1232g(b) non-disclosure provisions, we need not to determine whether *Gonzaga*'s express holding applies to §1232g in its entirety because, applying the analysis set forth in *Gonzaga*, we conclude that plaintiff does not have the personal right required for a §1983 claim under §1232g(a).....
>
> Again, while the record-access provisions may contain a greater individual focus than the non-disclosure provisions, in that institutions that "effectively prevent" parents from exercising their rights could do so on either an individual or an aggregate level, we do not find in this language an unambiguous expression of congressional intent to confer an individual right enforceable by § 1983.
>
> Accordingly, because we find that *Gonzaga* compels the conclusion that FERPA's records-access provisions, § 1232(g)(a)(1), do not create a personal right enforceable under § 1983,..... *Taylor v. Vermont Dept's of Educ.*, 313 F.3d 768, 785-6(2nd Cir. 2002).

Where the Ninth Circuit has not expressly published its analysis and opinion in this regard, the Secretary deceptively cited a footnote of *Desyllas v. Bernstine*, 351 F.3.d 934, 941 (9th Cir. 2003). Such footnote does not constitute a legal authority or represent this Circuit's decision on this issue, but an informal opinion of the court based on the circumstance of the case before it, not from deciding a case on merit.

The instant case is of alleging: (i) the BOR violated FERPA's records-access provisions, § 1232(g)(a)(1), and (ii) both the BOR and the Secretary violated FERPA's federal due process right, § 1232(g)(a)(1) and (2); 34 C.F.R. § 99.60 et seq. Hence, the Secretary was not a party in either *Taylor* or *Gonzaga*; thus, either case does not apply to the Secretary. The Court of Appeals ignored the fundamental difference between *Taylor* and *Sakkarapope*. *Taylor* was not a student and did not pursue FERPA administrative due process. *Taylor* did not file a complaint with the Secretary. All the cases cited were the cases alleging educational institutions violated FERPA, not the Secretary's failure to enforce FERPA, §1232g(f) and(g), leading to a deprivation of a due process right guaranteed by the Fourteenth Amendment.

The Court of Appeals overlooked that FERPA not only did not define "the Secretary" as "an educational institution," but also imposed administrative duty to enforce FERPA compliance, §1232g(f) and (g). *See also*, *Gonzaga v. Doe*, Id. The Secretary does not have custody of the educational records. There is no way the Secretary would violate FERPA under § 1232(g)(a).

For a statute to create such private rights, its text must be "phased in terms of the persons benefited." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 692, n. 13 (1979). Thus, FERPA does create not only rights for both students and their parents, "the right to inspect and review their education records," under §1232g(a), but also a "federal due process" for enforcing and protecting those rights. 34 C.F.R 99. *See also*, WAC 504-21-030. Whether each right is enforceable by §1983 is a separate legal inquiry, which the later one has not yet been before the courts.

Although FERPA does not expressly indicate that the Secretary's decision is reviewable by a federal court, whether a decision denying Sakkarapope's due process rights under FERPA is governed by the federal Administrative Procedure Act, 5 U.S.C. §551 is a question of exceptional importance.

Where the federal APA does not expressly exclude the Secretary's FERPA administrative decision from the Act, Petitioner respectfully submits that a student has "a right to appeal or otherwise contest the FPCO's decision with respect to complaints filed under FERPA" pursuant to the federal Administrative Procedure Act (APA). Whether such federal right exists is a question of importance to be settled in this court, where the Court of Appeals overlooked such question on merit.

The Secretary has administrative duty, not discretionary function, to enforce FERPA and afford a due process to students. §1232g(f) and(g), §1231c, and§1221e-3. Where the Secretary denied the due process rights under both FERPA and the federal APA, Sakkarapope lacked any federal review mechanism to recourse from the failure to perform official duty. The state and federal officials stripped his FERPA's rights—right to inspect and review, and right to a federal due process. Whether these rights are guaranteed by the Fourteenth Amendment, presumptively enforceable by §1983 and whether this instant case falls within the exception of *Wright* and *Wilder*, where "an aggrieved individual lacked any federal review mechanism," are substantial questions of exceptional importance to be settled by this court to secure uniformity of the court's decisions.

In sum, there are three distinguishable legal inquiries: (i) whether FERPA creates a federal private right, "right to inspect and review," actionable under §1983 against an educational institution, (ii) whether FERPA creates "a federal due process right" actionable under §1983 against an educational institution and/or the Secretary, and (iii) whether "federal due process rights" under § 1232(g)(a)(1) and (2); 34 C.F.R. § 99.60 et seq. are guaranteed by the Fourteenth Amendment. The Court of Appeals did not provide any analysis of its decision in regard to the above important legal inquiries, but simply cited *Gonzaga*, out of the original context of the Supreme Court's opinion.

Where the Congress did not define "the Secretary" as "an educational institution," the application of the authority as if "the Secretary" were "an educational institution," is unconstitutional. Therefore, a legal inquiry of whether the Secretary's failure to enforce FERPA is enforceable is also of the public interest at large, in which it substantially affects a rule of national application.

Therefore, the questions sought to be reviewed in this court as stated herein warrant for the writ. A consideration by this court will have national applications to secure national uniformity of the decisions.

B. The Application of RCW 4.94.010 Violates The Equal Protection Clause Of The Fourteenth Amendment; A Suit In A Federal Court Is The "Only Venue" Given That The State Courts Do Not Have Jurisdiction Over FERPA Claims. [Question # 5-8]

"[B]ecause FERPA prohibits most of the Secretary's functions from being carried out in regional offices, §1232g(g), in order to allay the concern that regionalizing enforcement might lead to multiple interpretations of FERPA, it is implausible to presume that Congress nonetheless intended private suits to be brought before thousands of federal- and state-court judges." *Gonzaga v. Doe*, Id. FERPA complaints are thus not authorized to be litigated in any state court, but under the Secretary.

Administrative decisions and actions of the Secretary are generally governed by the federal Administrative Procedure Act, 5 U.S.C. §551, and subject to judicial review in a federal court. The discretionary function exception does not apply to FERPA compliance since FERPA gives a course of specific conducts for the Secretary and the institution to follow, 34 C.F.R 99. *Berkovitz*, 486 U.S. at 536. Thus, the Secretary's decisions in regard to FERPA including that of

the Board of Regents are under federal court jurisdiction, not state courts.

Given that the state waives its immunity in the state courts and by adopting *McConnell v. Critchlow*, and holding that "it has not done so in the federal courts," the state statute of RCW 4.92.010 is inapplicable because it conflicts with the federal statute, FERPA. RCW 4.92.130. Otherwise, RCW 4.92.010 is unconstitutional as FERPA compliance litigations are not authorized in the state courts and RCW 4.92.010 placing roadblocks in the way of Sakkarapope's claims against the state having been abandoned in which it violates the Equal Protection Clause or Const. art. 1, 12. *HUNTER v. NORTH MASON HIGH SCH. & SCH. DIST.* 403, 85 Wn.2d 810, 539 P.2d 845 (1975) at 818-19.

According to the Provost's decision of November 6, 2002, the University was directing Sakkarapope to challenge its decision in regard to FERPA's procedure in the state superior court. (App. at 61-62) Such direction was without merit as it is subject to non-binding effect. FERPA does not authorize the state court to adjudicate FERPA complaints. Sakkarapope has no obligation to follow such direction. RCW 42.17.250.

Under the specific circumstance in the instant case where FERPA does not allow a complaint to be litigated in any state court and the Secretary's failure to perform its FERPA duty the FPCO, a suit in a federal court is the only venue. Thus, the Court of Appeals' decision of dismissal is practically a roadblock in the way of Sakkarapope's claims against the state having been abandoned in which it violates the Equal Protection Clause which forbids a state from denying any persons within its jurisdiction the equal protection of its laws. The Court of Appeals' decision also cut Sakkarapope's litigation into a piecemeal litigation, one in a state court and another one in a federal court. Such piecemeal litigation is prohibited, where the causes of actions arose from the same or closely related sets of facts and

official actions. The FERPA claims in the instant case should not be adjudicated separately to secure the just and the uniformity of the court's decisions.

The Article II Section 26 of the state constitution explicitly expresses the state consent to suit as a private person or corporation. RCW 4.92.090. Where a state consent to suit in a state forum explicitly expresses, it amounts to consent in the federal forum. For a case as one to enjoin state officers from enforcing a state statue in violation of federal law, it cannot, in any fair sense, be considered a suit against the state. *Regan v. Farmers' Loan & Trust Co.*, 154 U.S. 392 (1894). A suit under FERPA claims against the BOR and/or the Secretary cannot be considered a suit against the state or the United States. The Court of Appeals' decision is in conflict with *Regan,* Id.

Where such administrative remedy and enforcement of FERPA is insufficient, an important inquiry is whether these FERPA rights exist and are guaranteed by the Fourteenth Amendment, presumptively enforceable by §1983. Whether the state statute of RCW 4.92.010 should be declared inapplicable and unconstitutional under the specific condition of the instant case is a question of exceptional importance warranted for the writ.

C. The Board Of Regents of Washington State University Is A "Person" Within The Meaning Of 42 U.S.C. §1983," By RCW 1.16.080(1); The Immunity Is Equitably Waived Where The University Accepts Federal Funds And Has Obligation To Comply With FERPA. [Question #9]

The Court of Appeals' decision conflicts with the statute of the State of Washington, RCW 1.16.080. RCW 1.16.080(1) defines the term "person" that may be construed to include the United States, "this state," or any state or territory, or any public or private corporation or limited liability company, as well as "an individual." This definition

also is consistent with the other related statutes, e.g., RCW 1.16.065, RCW 42.30.020, RCW 42.17.010, 020(3); RCW 42.52.010. Therefore, the State of Washington practically confers the BOR has the same status as an "individual." Thus, the BOR is legally a "person" within the meaning of §1983 by the state consent.

The Court of Appeals' adoption of *Thompson v. City of Los Angeles*, 885 F. 2d 1439, 1443 (9th Cir. 1989), was without considering the specific situation of the instant case inconsistent with the standard set forth by the Fifth Circuit which it carefully noted that "Each situation must be addressed individually because the states have adopted different schemes, both intra and interstate, in constituting their institutions of higher learning." *United Carolina Bank v. Board of Regents of Stephen F. Austin State University*, 665 F.2d 553 (5th Cir. 1982).

The Court of Appeals overlooked that University of California and Washington State University are not under the same, identical state constitution. While Washington State University was created by a state legislature, RCW 28B.30, the University of California was explicitly created as part of the constitution, Article 9 Section 9, and the constitution does not explicitly express consent to be sued. Not all of university functions are entitled to Eleventh Amendment immunity. *Doe v. Lawrence Livermore National Laboratory*, 65 F.3d 771, 775 (1995). Thus, *Thompson* is not applicable as it conflicts with the statues of the State of Washington.

Given that the BOR is an institution as an arm of the state, the court must determine whether the BOR has taken some action that would divest the institution of sovereign immunity, at least for purposes of the lawsuit, e.g, *Florida's Tort Claim Act, Fla. Stat.* 768.28 (1985); *Washington's Actions and Claims Against State Act*, Chapter 4.92 RCW. Sovereign immunity is unavailable in institutions where the state entity is not performing a governmental function, but one that a private entity could perform. *Brown v. Florida*

State Board of Regents, 513 So.2d 184(Fla. Dist. Ct. App. 1987). The FERPA compliance is not discretionary, but administrative.

Not only the state waived its sovereign immunity in the state forum, RCW 4.92.090, but also the state statutes of WSU have consented to comply with federal requirements when receiving federal funds, e.g., RCW 28B.30.210 through 285. Such conditions have divested the Board's immunity as an arm of the state. When performing a function of FERPA compliance, the BOR as its "governing body," has duty to comply with respect to federal due process of law guaranteed by the Fourteenth Amendment. A "special relationship" between the higher education institution and its students gives rise to a duty beyond that owed to invitees or to the general public. *Kleinknecht v. Gettysburg College,* 989 F.2d 1360 (3d Cir. 1993). The BOR and the Secretary owed Sakkarapope a federal due process of law under FERPA, 20 U.S.C. §1232; 34 CFR 99, and are not immune from negligence suits under either sovereign or charitable immunity, liability defends.

The questions whether the Board of Regents of Washington State University is a "person" within the meaning of 42 U.S.C. §1983," by RCW 1.16.080(1), and whether its immunity, if there is, is equitably waived by the related statutes are important and warranted for the writ. Such writ will have national application and uniformity of the court's decisions.

D. Sakkarapope's Due Process Rights Have Been Violated. [Question # 5, 6 and 10]

The Court of Appeals overlooked that the Board of Regents moved for a summary judgment based on a trial court order obtained through an unauthorized proceeding under the state APA, RCW 34.05.590. "The APA does not expressly authorize summary judgments, but case law has established that agencies may employ summary

proceedings." *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999). WSU does not have a statute to allow a summary judgment. Such judgment entered is void ab initio and is, in legal effect, no judgment at all. *Rust v. WWSC*, 11 Wn. App. 410, 419, 523 P.2d 204 (1974). The state trial court abused of discretion. *State Ex Rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

While the district court recognized a problem of citing the state trial court's decisions of March 5, 2004, at the hearing of May 25, 2004, that:

> Well, that's what somebody from the state attorney general's office wrote and the judge signed...No, I'm just saying it's problematic when a lawyer writes out what the Judge is deciding...That's the difficulty I has, Miss Vance, in trying to discern exactly what testimony the state court entertained and what the state court's decision was.... (Excerpt 281-2),

In addition, in the state Supreme Court had repeatedly held that a memorandum opinion was merely an informal expression of the state trial court's view; it does not constitute either findings of fact or conclusions of law.

Where the objections to the findings of facts were made in the state court and in the district court, the district court still adopted the disputed facts in its decision. The entire district court's application of law was substantially rested on a clearly erroneous finding of a material fact, not supported by the record of evidence, and rested on an inaccurate view of the law. While the Secretary did not move for a summary judgment, the district court entered a judgment on its behalf. Such granting a summary judgment in violation of his due process right constitutes abuse of discretion and substantially causes a complete miscarriage of justice. *United States v. Finley*, 301 F.3d 1000, 1007 (9th Cir.

2002). Therefore, the district court's decision was arbitrary and unconstitutional. The proceeding should be declared a mistrial. The order is unconstitutional.

Howard Grime was the chair of the CGSRR rendered the academic decision where it does not have any expertise in Sakkarapopes' areas of study, and withheld Sakkarapope's educational records where it has duty to comply with the public records disclosure provision and FERPA. Further, when Grimes became dean of the Graduate School, it began a retaliation campaign leading to the termination of Sakkarapope from the joint master degree program in Statistics. Despite of Sakkarapope's appeals, no hearing was afforded.

An academic dismissal is protected under the APA. WSU already conceded that "[a]cademic dismissals are not excluded." from the APA, and that "The University's obligation was to afford Mr. Sakkarapope due process in arriving at a decision. *Horowitz*, 435 U.S. at 79-80." (Ct. Rec. Exh. ...) *Horowitz v. Board of Curators of the Univ. of Missouri,* 538 F.2d 1317 (8th Cir. 1976); *Schuler v. University of Minnesota,* 788 F. 2d. 510 (8th Cir. 1986).

Where WSU adopted rules and procedures, i.e., WAC 504-04-110, WAC 10-08, thus, an academic dismissal is fully protected of a due process under the state law with higher standard requirement than that of the minimal due process requirement under the federal constitution. Sakkarapope is entitled to a due process hearing pursuant to WAC 504-04-110, WAC 10-08. The published procedures were not followed and no hearing was afforded in both dissmissals from the IIDP and a joint master degree program.

A "property interest" in continued attendance and school officials' obligations to afford a minimal due process were recognized that the student should be accorded an opportunity to appear personally to contest such allegation. *Gaspar c. Bruton,* 513 F.2d 843, 850-51 (10th Cir. 1975); Goss v. Lopez, 419 U.S. at 584, 95 S.Ct. at 741 [519 F 2d at

9]; *Board of Regents v. Roth*, 408 U.S. at 573, 92 S. Ct. at 2707. Thus, a "hearing" is required to be held before the final order becomes effective. *Shirley Bowing v. Board of Trustee of Green River Com. College*, 85 Wn.2d 300(1975); *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969).

The dismissal from the M.S. program was NOT on academic grounds, but a dispute of a program completion deadline. (CR[7] 669). Grimes is not authorized to make academic decision of dropping a student. (Graduate School Policies and Procedures (GSPP) at 17; CR 550) Sakkarapope, in fact, received a satisfactory annual evaluation result of making normal progress toward the degree completion. (CR 13-4, 669) Such dispute is a question of fact and law, not involved with scholastic standards, readily for a full due process of law. *Brookins v. Bonnell*, 362 F. Supp. 379, 383 (E.D. Pa. 1973). Indeed, the facts show arbitrary, capricious, and premeditatedly retaliation actions by Grimes, official misconducts. RCW 9A.80.010.

A court has subject matter jurisdiction to decide whether the official procedures used in assigning a student a particular grade were arbitrary and capricious. *OCHSNER v. BOARD OF TRUSTEES*, 61 Wn. App. 772, 773, 811 P. 2d 985 (1991) Under the Graduate Student Code, Sakkarapope has rights and expectations while WSU has duty to maintain them, (CP[8] 261-271), to publish rules and procedures, RCW 42.17.250, to notify administrative remedies available, and to fulfill faculty responsibilities. The fact shows that Kenneth Duft not only breached a contract of the agreed content and format of the IIDP exam (CP 74-8) and refused to convene the exam committee to solve the dispute in the result of the written exam, but also rushed into the oral exam and concluded the proceeding. The IIDP exam was never been reviewed by any independent committee having expertise in the academic areas of study.

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[7] CR refers to WSU's certified records filed in the state courts.

[8] Clerk's papers in the state court docket.

To date, Sakkarapope has not yet seen the entire exams. Hence, the IIDP exam decision was arbitrary and capricious; and the procedural flaws arisen from WSU's failures to perform its duties constitute justifiable reliance and invited error. WSU is then barred from inserting its own negligence and misconduct to justify the dismissals. In the presence of clearly shown constitutional flaws in the "administrative process," i.e., *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617(1968), the dismissals from both programs violated and deprived Sakkarapope's due process right and liberty interest. WSU breached an educational contract.

Grimes' conducts are not only directly involved with the violation of FERPA federal due process right, but also substantially affected Sakkarapope's due process right under the state APA in regard to the dismissals as well as Sakkarapope's due process right and immigration status and federal right under the INA. Such affirmative official misconducts have substantial backdrops in both state and federal courts, in which it cannot be excluded in this instant case.

A hearing is the critical component of Sakkarapope's due process. Grimes' actions violate and deprive Sakkarapope's due process right guaranteed by the Fourteenth Amendment. Such violation was ignored by the state trial court, the district court and the Court of Appeals.

Where such violation of due process rights has spread across state and federal frontier, a federal question whether Sakkarapope's due process rights have been violated and deprived under the Fourteenth Amendment is significant and whether the constitutionality of the lower court decisions are unconstitutional are warranted for the writ. A clarification of what protection the Constitution actually affords a student from official misconduct is nationally significant. A consideration by this court will secure the just, judicial

standard and the uniformity of the lower court's decisions as well as maintain public faith the judicial system.

E. The Doctrines of Res Judicata and Collateral Estoppel Do Not Apply to the Instant Case. [Question # 11]

The Petition for Review on the portion of Paragraph 3B was brought before the state trial court to interpret a procedural matter of brief adjudicative proceedings under the APA (RCW 34.05); it was not a complaint of FERPA violation. Because of the defendant's counsel misconduct making misrepresentation of the petition, Sakkarapope filed a motion before the U.S. District Court to take supplemental jurisdiction and notified the state trial court on March 4, 2004, to remove the controversial subject matter off the petition. Consequently, the state trial court's decision on the portion of paragraph 3B of the Petition for Review became legally moot and unconstitutional. The state trial court lacks of jurisdiction over the subject matter as to Mr. Sakkarapope's action of removal the controversial issue off the petition for review. Here, Plaintiff preserved the subject matter; the res judicata doctrine is not applicable in this case.

Like the doctrine of res judicata which bars relitigation of a claim once it has been decided, the doctrine of collateral estoppel, or issue preclusion, prevents relitigation of an issue after the party against whom the doctrine is applied has had a full and fair opportunity to litigate his or her case. *Hanson v. City of Snohomish*, 121 Wn.2d 552, 561, 852 P.2d 295 (1993); *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983). *The RESTATEMENT (SECOND) OF JUDGMENTS* § 27 (1982) states the general rule as follows:

> When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the

> determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

Under this doctrine, a subsequent action is barred when it is identical with a previous action in four respects: (1) same subject matter; (2) same cause of action; (3) same persons and parties; and (4) same quality of the persons for or against whom the claim is made. *Norco Constr., Inc. v. King County*, 106 Wn.2d 290, 293, 721 P.2d 511 (1986); *HAYES v. CITY OF SEATTLE*, 131 Wn.2d 706, 934 P.2d 1179 (1997).

Before the doctrine of collateral estoppel may be applied, the party asserting the doctrine must prove: (1) the issue decided in the prior adjudication is identical with the one presented in the second action; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) application of the doctrine does not work an injustice. *Reninger*, 134 Wn.2d at 449; *Hanson*, 121 Wn.2d at 562; *McDaniels*, 108 Wn.2d at 303; *Chau v. City of Seattle*, 60 Wn. App. 115, 119, 802 P.2d 822 (1991); *NIELSON v. PANAWAY GEN. MED. CLINIC*, 135 Wn.2d 255, 263 (1998). However, the District Court misrepresented the facts and the natures of the case. It is clear that the parties in both cases are not exactly identical. The so-call Board of Regents was used in different legal representations. The issues in both cases are not identical, but closely related because it arose from the same officials who had acted in various roles.

In determining whether application of the doctrine of collateral estoppel would work an injustice, the court focuses on whether the parties to the earlier adjudication were afforded a full and fair opportunity to litigate their claim in a neutral forum. *Rains*, 100 Wn.2d at 666; *Neff v. Allstate Ins. Co.*, 70 Wn. App. 796, 801, 855 P.2d 1223 (1993); *NIELSON*

v. SPANAWAY GEN. MED. CLINIC, 135 Wn.2d 255, 265 (1998). In *Marquardt*, the Court of Appeals held that "collateral estoppel should not be applied to judgments of dismissal, even when based on settlement agreements, since the parties could settle for myriad reasons not related to the resolution of the issues they are litigating." *Marquardt v. Federal Old Line Ins. Co.*, 33 Wn. App. 685, 658 P.2d 20, 689 (1983).

Given that the trial court order at issue were constitutional and effectively final, the collateral estoppel is not applicable here because the state superior court declined to review of Sakkarapope's arguments. Where the state superior court dismissed the case due to untimely submission and/or the issues were not actually litigated, Sakkarapope was NOT afforded a full and fair opportunity to litigate in the state court. It cannot be said it is fair to apply such doctrine preventing the claims in the federal court. Therefore, the collateral estoppel is not applicable in this case.

In addition, "Res judicata does not bar claims which arise out of a transaction separate and apart from the issue previously litigated." *Schoeman v. New York Life Ins. Co.*, 106 Wn.2d 855, 860, 726 P.2d 1 (1986) (citing *Seattle-First Nat'l Bank v. Kawachi,* 91 Wn.2d 223, 226, 588 P.2d 725 (1978)). Given that the state trial court at issue is effectively considered a final judgment, Sakkarapope is also not barred from the federal court because: (i) Sakkarapope's claim in this court is not a subsequent action of the petition for review under the state APA, but the Complaint is a subsequent action of the Secretary's final decision of January 20, 2004; and (ii) the constitutional prohibition against double jeopardy includes within it the right of the defendant, who is not the state, to plead "collateral estoppel." 397 U.S. 436.

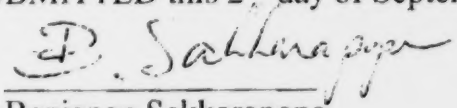
V. CONCLUSION

Petitioner respectively asks this court to grant a writ and reverse the Court of Appeals' decision. A consideration

by this court will settle all important issues sought to be reviewed and secure a uniformity of national application. Any student, American or international, should be explicitly informed of what protection they would be guaranteed under the Constitution of the United States.

It is further requested that this court grant relieves as indicated in the original Complaint and the briefs filed in the Court of Appeals including reasonable costs and expenses. If there is such a proceeding on remand to the district court, it is requested that the entire case is transferred to the Western District of Washington for further proceedings.

RESPECTFULLY SUBMITTED this 2nd day of September, 2006.



Benjapon Sakkarapope
Appearing Pro Se Petitioner

No.

IN THE

Supreme Court of the United States

BENJAPON SAKKARAPOPE,
Petitioner

V.

THE BOARD OF REGENTS OF
WASHINGTON STATE UNIVERSITY,
AND
THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF EDUCATION,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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Office of the Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939

June 27, 2006

USDC, Spokane
Eastern District of Washington (Spokane)
O.O. Box 1493
Spokane, WA 99210

No.	Title	Agency/D.C. No.
04-35643	Sakkarapope v. Board of Regents WA	CV-04-00074-JLQ

Dear Clerk:

The following document in the above listed cause is being sent to you under cover of this letter.

Certified copy of the Decree of the Court

The record on appeal will follow under separate cover. Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,
Cathy A. Catterson
Clerk of Court
s/ Gabriela Van Allen
Deputy Clerk

Enclosure(s)
cc: All Counsel

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; et al., Defendants-Appellees.	No. 04-35643 D.C. No. CV-04-00074-JLQ **JUDGMENT**

Appeal from the United States District Court FOR THE Eastern District of Washington (Spokane).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of Washington (Spokane) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is
AFFIRMED.

Filed and entered 02/22/06

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 30 2006
JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE. WASHINGTON

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; ET AL., Defendants-Appellees.	No. 04-35643 D.C. No. CV-04-00074-JLQ **JUDGMENT**

Appeal from the United States District Court FOR THE Eastern District of Washington (Spokane).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of Washington (Spokane) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is
AFFIRMED.

Filed and entered 02/22/06

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
JUN 27 2006
s/ Gabriela Van Allen
By Deputy Clerk

FILED
FEB 22 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; ET AL., Defendants-Appellees.	No. 04-35643 D.C. No. CV-04-00074-JLQ **MEMORANDUM***

Appeal from the United States District Court
For the Eastern District of Washington
Justin L. Quackenbush, District Judge, Presiding

Submitted February 13, 2006**

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Benjapon Sakkarapope appeals pro se from the district court's judgment dismissing his 42 U.S.C. §1983 action alleging violation of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g. We have jurisdiction under 28 U.S.C. 1291. After de novo review, *Thompson v. City of Los Angeles,* 885 F.2d 1439, 1442 (9th Cir. 1989), we affirm.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The district court properly dismissed Sakkarapope's claims against defendant Board of Regents because the Board is not a "person" within the meaning of 42 U.S.C. §1983. *See id.* at 1443. Moreover, even if the State of Washington has waived its sovereign immunity to 42 U.S.C. §1983 actions in its own courts, it has not done so in the federal courts. *See McConnell v. Critchlow,* 661 F.2d 116, 117 (9th Cir. 1981).

The district also properly dismissed Sakkarapope's claims against the Secretary of Education because FERPA does not create a private right of action. *See Gonzaga University v. Doe,* 536 U.S. 273, 287 (2002).

Sakkarapope's remaining contentions are unpersuasive.

Sakkarapope's pending motions are denied.

Appellee's motion to strike is granted.

AFFIRMED

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 22 2004
JAMES R. LARSEN, CLERK
_____DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WSU, et al., Defendants.	JUDGMENT IN A CIVIL CASE CASE NUMBER: CV-04-00074-JLQ

Decision by Court. This action came to hearing the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED Washington State University's motion for Summary Judgment is GRANTED. Plaintiff's Complaint and the claims therein are DISMISSED WITH PREJUDICE.

June 22, 2004
Date

JAMES R. LARSEN
Clerk
s/ Renea Ferrante
(By) Deputy Clerk

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 22 2004
JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT AND DIRECTING JUDGMENT OF DISMISSAL**

BEFORE THE COURT is Defendant WSU's Motion for Summary Judgment (Ct. Rec. 16) and the issues raised in this court's prior Order to Show Cause (Ct. Rec. 21) and the subsequent briefing of the parties (Ct. Rec. 36, 38, 44). A teleconference was held regarding the Order to Show on May 25, 2004. The Motion for Summary Judgment was taken under submission without oral argument on June 7, 2004. Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**. Defendant, the Secretary of Education, is represented by Assistant United States Attorney **Rolf H. Tangvald.**

BACKGROUND

Plaintiff is a national of Thailand and former WSU student. Plaintiff was a candidate for a Ph.D program in Agricultural Economics and a Masters degree student in Statistics. Plaintiff failed the preliminary qualifying exam for the Ph.D. program in January of 2000, and was notified in April of 2000 that he would be dropped from the program. While appealing his dismissal from the Ph.D. program through the administrative process at WSU, Plaintiff continued to be enrolled as a Masters degree students in Statistics. Plaintiff failed to complete the requirements for the Master degree program in a timely manner and was disenrolled in February 2003.

Plaintiff has contested his dismissal over the last four years by sending numerous letters to WSU and involving the Washington Attorney General's Office in his public records request. He also has allegedly filed a petition with the Secretary of the U.S. Department of Education to enforce compliance under the Family Education Rights and Privacy Act ("FERPA"). The petition was denied. Plaintiff also filed a petition for review of WSU's actions in the Superior Court of Whitman County on July 23, 2003. (Ct. Rec. 6). A hearing for summary judgment was held in that case on February 6, 2004. On February 17, 2004, the Superior Court entered a "Memorandum Decision On Motion For Summary Judgment". (Ct. Rec. 19, Deft. Ex. B). The memorandum decision stated that summary judgment "will be granted" as to WSU's decision to dismiss Plaintiff from the Ph.D. and Masters programs. (Id). It also stated that the portion of the petition seeking review of WSU's actions under FERPA was untimely and "will be dismissed". (Id). The decision then directed WSU to prepare and order in accordance with the court's decision.

Apparently while WSU was preparing this order, Plaintiff decided to file a lawsuit in federal court on February 24, 2004. (Ct. Rec. 1). Plaintiff now brings a 42 U.S.C. §1983 action alleging violation of his federal right under

FERPA and that disenrollment from the Masters in statistics program at WSU violated his due process rights. (Ct. Rec. 1). Plaintiff then filed a "Motion for Supplemental Jurisdiction" on March 4, 2004, in which he represented that "the state court has not yet entered any ruling in the case" (Ct. Rec. 5), and apparently sought this court to stay the state court proceeding and "take" the case from the state court. A final decision was entered by the Superior Court of Whitman County on March 5, 2004. (Ct. Rec. 19, Deft. Ex. C). The final decision dismissed Plaintiff's FERPA claim for lack of subject matter jurisdiction and found that WSU's decision to dismiss Plaintiff from the Masters in statistics program on academic grounds was not arbitrary and capricious and that Plaintiff was afforded 'all process due". (Id). Plaintiff filed a notice of appeal to the state of Washington Court of Appeals on March 5, 2004. (Ct. Rec. 19, Deft. Ex. D).

I. Rooker-Feldman

This court issued an Order to Show Cause believing that allocation of the *Rooker-Feldman* doctrine may result in an absence of subject matter jurisdiction and dismissal of Plaintiff's action. After reviewing the parties briefing, holding a hearing and consulting recent Ninth Circuit caselaw, the court finds that the *Rooker-Feldman* doctrine does not preclude subject-matter jurisdiction in this case.

The *Rooker-Feldman* doctrine, so named for the cases of *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 464 (1983), prohibits a losing plaintiff in state court from bring a suit in federal court asserting as legal wrongs the allegedly erroneous legal rulings of the state court and seeking to set aside the judgment of the court. Such a suit is a "forbidden de facto appeal". *Noel v. Hall*, 341 F.3d 1148, 1156 (9th Cir. 2003). Although it could reasonably be argued that Plaintiff's federal suit is a de facto appeals of his adverse state court ruling, recent Ninth Circuit decisions dictate that a district court use caution when determining whether the doctrine applies. The *Noel* court observed it is

"commonplace" for district courts to complain that the "doctrine is difficult to apply". 341 F.3d at 1162. The *Noel* court then stated, "where the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker-Feldman* does not bar jurisdiction. " *Id.* at 1163.

More recently in *Maldonado v. Harris*, ____F.3d____ (9th Cir. June 4, 2004), the Ninth Circuit, relying on *Noel*, reversed the district court's determination that the doctrine applied and cautioned that although a suit not barred by *Rooker-Feldman* may nonetheless be claimed-precluded, claim preclusion and *Rooker-Feldman* are distinct inquiries. *Id.* at ___. The Maldonado court noted that even though plaintiff's complaint sought relief from the injunction entered by the state court, *Rooker-Feldman* did not apply. The court stated that in order for *Rooker-Feldman* to apply, "a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for relief." *Id.* at ___. These recent Ninth Circuit cases leave the definite impression that the doctrine is to be applied to dismiss an action only sparingly. Although Sakkarapope may now raise the same claims he made in the state court, he does not specifically seek to vacate the state court judgment nor does he specifically allege a legal error by the state court as the basis for his relief in federal court. Therefore, the *Rooker-Feldman* doctrine does not apply.

II. Eleventh Amendment Immunity

In its summary judgment motion, Defendant WSU argues that it is an "arm of the state" entitled to immunity from suit under the Eleventh Amendment. Additionally as an "arm of the state" WSU argues that the Washington State University Board of Regents is not a "person" within the meaning of 42 U.S.C. §1983, and is therefore not subject to liability. The court finds merit with both arguments.

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against

one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign States." U.S. Const. amend XI, and represents, "a real limitation on a federal court's federal-question jurisdiction," *Idaho v. Coeur d'Alene Tribe,* 521 U.S. 261, 270(1997). Generally a state created and funded university is considered an instrumentality, or arm, of the state and is entitled to Eleventh Amendment immunity. See *Rounds v. Oregon State Bd. Of Higher Education.*, 166 F.3d 1032 (9th Cir. 1999)(finding University of Oregon was "arm of the State" entitled to immunity); *Goodisman v. Lytle*, 724 F.2d 818 (9th Cir. 1984)(University of Washington is an arm of the state).

WSU is similarly created, funded, and controlled by the State and is therefore considered an arm of the state and entitled to immunity under the Eleventh Amendment to the same extent as the University of Washington. See *Spaulding v. University of Wash.,* 740 F.2d 686, 692 (9th Cir. 1984)(overruled on other grounds); *Hontz v. State*, 105 Wash. 2d 302 (1986)(University of Washington is state agency). Additionally, the state and its agencies are not persons subject to suit under 42 U.S.C. §1983. *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 65 (1989); *Thompson v. City of Los Angeles,* 885 F.2d 1439, 1443 (9th Cir. 1989)(dismissal of civil rights lawsuit was warranted against University of California Board of Regents because is not a "person" within the meaning of §1983).

III. Collateral Estoppel/Res Judicata

WSU also contends that the doctrine of res judicata prohibits Plaintiff from bringing claims that were raised, or could have been raised, in the prior adjudication. WSU contends that Plaintiff's FERPA and Due Process claims are both precluded under the res judicata doctrine by reason of the prior state court action. Alternatively, WSU contends that the doctrine of collateral estoppel applies to the issue of the alleged wrongful dismissal from the Masters statistics program.

When the former judgment is a state court judgment, as is the case here, this court must apply the res judicata and collateral estoppel rules of the state that rendered the underlying judgment. *Migra v. Warren City School Dist. Bd. Of Ed.*, 465 U.S. 75 (1984). Federal courts must give the same preclusive effect to a state court judgment as another court of that state would give. See 28 U.S.C. §1738; *Palomer Mobilehome Park Ass'n v. City of San Marcos,* 989 F.2d 362, 364 (9th Cir. 1993). Under Washington law, res judicata bars relitigation of claims that were or should have been decided among the parties in an earlier proceeding. See *Loveridge v. Fred Meyer, Inc.*, 887 P.2d 898, 900 (Wash. 1995) Res judicata occurs when a prior judgment has a concurrence of identity in four respects with a subsequent action. There must be identity of: 1) subject matter; 2) cause of action; 3) persons and parties; and 4) the quality of the persons for or against whom the claim is made. *Rains v. State,* 100 Wash. 2d 660, 665 (1983). Collateral estoppel applies if: 1) the issues decided in the prior adjudication is identical with the one presented in the current action; 2) there was a final judgment on the merits; 3) the party against whom the plea is asserted was a party or in privity to the prior adjudication; and 4) the application of the doctrine will not work an injustice on the party against whom the doctrine is to be applied. *Id.* at 664.

WSU and Mr. Sakkarapope were both parties to the prior state court action. Mr. Sakkarapope alleged then, as he does now in federal court, that WSU wrongfully dismissed him from the Masters in statistics program without Due Process and raised the issues of his FERPA request for release of education records in his Petition for Review. Mr. Sakkarapope later represented to the state court that he was not seeking review of WSU's FERPA compliance and the state court ordered that Plaintiff's claims "arguably seeking review of WSU's decisions relating to the accuracy and completeness of his educational records under FERPA will be dismissed." (Feb 17, 2004 Memorandum Decision, Ct.

Rec. 19, Ex. B). The state court entered a final judgment, which Plaintiff appealed. The res judicata and collateral estoppel doctrines apply to state trial court judgments even if an appeal is pending. *City of Des Moines v. $81,231,* 943 P.2d 669, 674-76 (Wash. App. 1997)("a judgment becomes final for res judicata purposes at the beginning, not the end of the appellate process" and "Similarly, with collateral estoppel, a party is precluded from relitigating issues previously determined while an appeal as to those issues is pending."). The same rule applies in federal court. *Tripati v. G.L.Henman,* 857 F.2d 1366, 1367 (9th Cir. 1988)("To deny preclusion in these circumstances would lead to an absurd result: Litigants would be able to refile identical cases while appeals are pending, enmeshing their opponents and the court system in tangles of duplicative litigation.").

Application of the res judicata doctrine to this matter is appropriate to prevent Sakkarapope from enmeshing the Defendants and this court in the tangles of duplicative litigation. Additionally, Plaintiff is collaterally estopped from bringing a §1983 action against WSU alleging his constitutional right to Due Process was violated when he was dismissed from the Masters in statistics program. Both WSU and Mr. Sakkarapope were parties to the state court action and the identical issues were raised by Sakkarapope against WSU. The state court entered a final judgment deciding the issue and application of the collateral estoppel doctrine will not work an injustice, therefore all four elements for the application of collateral estoppel are met. Plaintiff had a full and fair opportunity to argue his claim in state court, with the court stating it had "spent considerable time reviewing the lengthy casefile" and that Plaintiff's pleadings were "unreasonably lengthy, confusing, and difficult to follow". This court concurs that Plaintiff has a tendency to submit overlength pleadings and voluminous exhibits. The Plaintiff's §1983 claim arising from his dismissal from the Masters and Doctoral programs are barred by the adverse decision of the Washington state superior court.

IV. FERPA Claim against Secretary of Education

With the disenrollment from the graduate program claims against WSU dismissed on the basis of res judicata/collateral estoppel, or alternatively on Eleventh Amendment immunity, the only remaining claim is the FERPA claim against the Secretary of Education. The Secretary contends that Plaintiff does not have a private right of action to bring a 42 U.S.C. §1983 suit based in violation of FERPA. This contention is correct. The United States Supreme Court has clearly held that the provisions of FERPA create no personal rights to enforce under 42 U.S.C. §1983. *Gonzaga University v. Doe*, 536 U.S. 273, 276 (2002). Plaintiff contends that the statutory subsection at issues in *Gonzaga*, §1232g(b), is not the same as the subsection he asserts his claim under, §1232g(a), and therefore *Gonzaga* is not controlling. However, this court does not read *Gonzaga* so narrowly, nor do subsequent Circuit decisions support Plaintiff's argument. See *Desyllas v. Bernstine*, 351 F.3d 934, 941 n.2 (9th Cir. 2003)("The statutory scheme[20 U.S.C. §1232g(b)(1)] does not create a private right of action for a student to sue under 42 U.S.C. §1983."); *Taylor v. Vermont Department of Education*, 313 F.3d 768, 786 (2nd Cir. 2002)("we find that *Gonzaga* compels the conclusion that FERPA's record-access provisions, §1232f(a)(1), do not create a personal right enforceable under §1983"); *Missouri Child Care Ass'n v. Cross*, 294 F.3d 1034, 1040 (9th Cir. 2002)(reading *Gonzaga* to hold that FERPA does not create any private right to enforcement); *United States v. Miami Univ.*, 294 F.3d. 797, 809 (6th Cir. 2002)(reading *Gonzaga* to hold FERPA does not creates that an individual may enforce through §1983).

Plaintiff may not assert a §1983 against the Secretary, or anyone else for that matter, based on the alleged violation of FERPA provisions.

CONCLUSION

Although application of the *Rooker-Feldman* doctrine is arguably appropriate in this matter, the court has

determined that it does have subject matter jurisdiction. The court has made a separate inquiry and determined that Plaintiff's claims against WSU are barred by the doctrines of res judicata and collateral estoppel. Additionally, this court finds that WSU is immune from suit under the Eleventh Amendment to the extent Plaintiff seeks monetary damages. WSU, as an arm of the state or state agency, is also not a "person" for purposes of §1983 and accordingly cannot be sued for damages under §1983. Plaintiff does not have a private right of action to bring a 42 U.S.C. §1983 suit based on violation of FERPA.

Accordingly, and for all the foregoing reasons,

IT IS HEREBY ORDERED:

1. WSU's Motion for Summary Judgment is **GRANTED**. (Ct. Rec. 16).

2. Plaintiff's Complaint and the claims therein are **dismissed with prejudice.** (Ct. Rec. 1)

IT IS SO ORDERED. The Clerk is hereby directed to file this Order, enter Judgment in favor of Defendants dismissing the Complaint and claims therein with prejudice, furnish copies to Plaintiff and counsel, and close this file.

DATED this 21st day of June, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
APR 12 2004
JAMES R. LARSEN, CLERK
_____DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **ORDER TO SHOW CAUSE RE: DISMISSAL**

Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**.

Plaintiff is a national of Thailand and former WSU student. Plaintiff was a candidate for a Ph.D program in Agricultural Economics and a Masters degree student in Statistics. Plaintiff failed the preliminary qualifying exam for the Ph.D. program in January of 2000, and was notified in April of 2000 that he would be dropped from the program. While appealing his dismissal from the Ph.D. program through the administrative process at WSU, Plaintiff continued to be enrolled as a Masters degree students in Statistics. Plaintiff failed to complete the requirements for the

Master degree program in a timely manner and was disenrolled in February 2003.

Plaintiff has contested his dismissal over the last four years by sending numerous letters to WSU and involving the Washington Attorney General's Office in his public records request. He also has allegedly filed a petition with the Secretary of the U.S. Department of Education to enforce compliance under the Family Education Rights and Privacy Act ("FERPA"). The petition was denied. Plaintiff also filed a petition for review of WSU's actions in the Superior Court of Whitman County on July 23, 2003. (Ct. Rec. 6). A hearing for summary judgment was held in that case on February 6, 2004. On February 17, 2004, the Superior Court entered a "Memorandum Decision On Motion For Summary Judgment". (Ct. Rec. 19, Deft. Ex. B). The memorandum decision stated that summary judgment "will be granted" as to WSU's decision to dismiss Plaintiff from the Ph.D. and Masters programs. (Id). It also stated that the portion of the petition seeking review of WSU's actions under FERPA was untimely and "will be dismissed". (Id). The decision then directed WSU to prepare and order in accordance with the court's decision.

Apparently while WSU was preparing this order, Plaintiff decided to file a lawsuit in federal court on February 24, 2004. (Ct. Rec. 1). Plaintiff now brings a 42 U.S.C. §1983 action alleging violation of his federal right under FERPA and that disenrollment from the Masters in statistics program at WSU-violated his due process rights. (Ct. Rec. 1). Plaintiff then filed a "Motion for Supplemental Jurisdiction" on march 4, 2004, in which he represented that "the state court has not yet entered any ruling in the case" (Ct. Rec. 5), and apparently sought this court to stay the state court proceeding and "take" the case from the state court. A final decision was entered by the Superior Court of Whitman County on March 5, 2004. (Ct. Rec. 19, Deft. Ex. C). Plaintiff filed a notice of appeal to the state of Washington

Court of Appeals on March 5, 2004. (Ct. Rec. 19, Deft. Ex. D).

It is well-established that "[a]s courts of original jurisdiction, federal district courts have no authority to review the final determinations of a state court in judicial proceedings. This is true even when the challenge to a state court decision involves federal constitutional issues." *Branson v. Nott,* 62 F.3d 287 (9th Cir. 1995). Plaintiffs petition for review in state court sought review of the "decisions and actions of the Board of Regents, Washington State University" including review of his dismissal from the Ph.D. and Masters program and review of his student record requests under state and federal law.

The *Rooker-Feldman* doctrine, so named for the cases of *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 464 (1983), prohibits a losing plaintiff in state court from bring a suit in federal court asserting as legal wrongs the allegedly erroneous legal rulings of the state court and seeking to set aside the judgment of the court. Such a federal suit is a "forbidden de facto appeal". *Noel v. Hall,* 341 F.3d 1148, 1156 (9th Cir. 2003). If a suit in federal court is a forbidden de facto appeal, in part, but also raises other claims, the court must apply the "inextricably intertwined" test and refuse to decide any issue raised in the federal suit that is "inextricably intertwined" with an issue resolved by the state court in its judicial decision. *Id.* at 1158.

It appears to this court that Plaintiff's federal §1983 suit is an impermissible collateral attach on the state court judgment, or a forbidden de facto appeal. To the extent Plaintiff's complaint alleges that his disenrollment from WSU constituted a Constitutional violation of his due process rights, such claim is inextricably intertwined with issues resolved by the state court in its decision. Accordingly,

IT IS HEREBY ORDERED:

1. Rooker-Felman is a jurisdictional doctrine. *See Worldwide Church of God v. McNair,* 805 F.2d 888 (9th Cir.

1986). Plaintiff is therefore directed to show cause why this Complaint should not be dismissed for lack of subject matter jurisdiction.

2. Plaintiff shall file on or before **May 3, 2004** a memorandum of authorities demonstrating why the present cause should not be dismissed.

3. If Plaintiff does not file the memorandum on or before May 3, 2004, the court shall enter judgment dismissing the claim with prejudice.

4. If Plaintiff does file the memorandum, Defendant WSU shall file a responsive memorandum on or before **May 17, 2004.** Plaintiff shall not file a reply memorandum. The issues raised in this order and the parties memoranda, if filed, will be heard via teleconference on May 25, 2004 at 3:00p.m. along with Defendant WSU's previously noted and pending summary judgment motion.

IT IS SO ORDERED. The Clerk is hereby directed to this Order, and furnish copies to Plaintiff and counsel.

DATED this 9th day of April, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
MAY 26 2004
JAMES R. LARSEN, CLERK
_____DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **ORDER RE: SUMMARY JUDGMENT MOTION AND PROHIBITION OF FILINGS**

BEFORE THE COURT are the issues raised in this court's prior Order to Show Cause (Ct. Rec. 21) and the parties subsequent responsive briefing (Ct. Rec. 36, 38, 44). A teleconference was held on these matters on May 25, 2004. Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**. Defendant, the Secretary of Education, is represented by Assistant United States Attorney **Rolf H. Tangvald,** however Frank Wilson appeared on behalf of the Secretary at the hearing.

IT IS HEREBY ORDERED:

1. At this time, Plaintiff has shown cause for this action to proceed. Plaintiff raises at least one issue in this federal action that was not decided by the Washington state

court and therefore application of the *Rooker-Feldman* doctrine does not divest this court of subject matter jurisdiction over the entirety of Plaintiff's claims. This court will reserve its ruling as to whether application of the *Rooker-Feldman* doctrine divests the court of jurisdiction over any of Plaintiff's claims.

2. Defendant WSU has previously sought and been granted an extension of time to file a reply brief in regard to the pending summary judgment motion. (Ct. Rec. 39). Defendant WSU shall file a reply brief, if any, **on or before June 7, 2004.**

3. With the exception of the aforementioned reply brief of WSU, **there shall be no further filings on behalf of any of the parties** until this court issues and Order granting, or denying, the summary judgment motion.

4. As of June 7, 2004, the summary judgment matter shall be deemed submitted and will be considered by the court **without** oral argument.

5. Upon determination of the summary judgment motion, future case scheduling dates will be set of necessary.

IT IS SO ORDERED. The Clerk is hereby directed to this Order, and furnish copies to Plaintiff and counsel.

DATED this 25th day of May, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 02 2004
JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **ORDER RE: PLAINTIFF'S MOTION FOR CLARIFICATION**

BEFORE THE COURT is Plaintiff's Motion for Clarification (Ct. Rec. 48) of this court's previous Order (Ct. Rec. 47). Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**. Defendant, the Secretary of Education, is represented by Assistant United States Attorney **Rolf H. Tangvald**.

Plaintiff apparently finds some lack of clarity in the court's previous statement that, "**there shall be no further filings on behalf of any of the parties** until this court issues and Order granting, or denying, the summary judgment motion." (Ct. Rec. 47). The meaning of this statement is entirely clear. However, Plaintiff wishes to file an amended statement of

facts, Plaintiff also wishes to file his own summary judgment motion and supporting memorandum.

IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Clarification (Ct. Rec. 48) is **DENIED** to extent it is really a motion for modification of the court's prior order. Plaintiff's request to amend his responsive statement of facts is **DENIED.**

2. Plaintiff's request to file his own summary judgment motion, in contradiction of this court's prior order, is DENIED. If Defendant's pending summary judgment motion is denied, Plaintiff will not be prejudiced by waiting until that time to file his summary judgment motion.

3. **THERE SHALL BE NO FURTHER FILINGS ON BEHALF OF ANY THE PARTIES** until this court issues and Order granting, or denying, the summary judgment motion, with the previously stated exception (Ct. Rec. 47) hat WSU may file a reply brief in regard to the pending summary judgment motion.

4. As of June 7, 2004, the summary judgment matter shall be deemed submitted and will be considered by the court **without** oral argument.

5. Upon determination of the summary judgment motion, future case scheduling dates will be set of necessary.

IT IS SO ORDERED. The Clerk is hereby directed to this Order, and furnish copies to Plaintiff and counsel.

DATED this 1st day of June, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 28 2004
JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **ORDER RE: PLAINTIFF'S MOTION FOR SANCTIONS**

BEFORE THE COURT is Plaintiff's Motion for Sanctions pursuant to Fed. R. Civ. P. 11(b)(Ct. Rec. 54). Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**. Defendant, the Secretary of Education, is represented by Assistant United States Attorney **Rolf H. Tangvald.**

This court previously granted summary judgment in favor of Defendants and entered Judgment on June 22, 2004. (Ct. Rec. 52, 53). Plaintiff filed a motion for sanctions on June 25, 2004. The court has reviewed the motion and finds the arguments therein devoid of merit. Sanctions are not warranted.

IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Sanctions (Ct. Rec. 54) is **DENIED**.

IT IS SO ORDERED. The Clerk is hereby directed to this Order, and furnish copies to Plaintiff and counsel.

DATED this 28th day of June, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondent.	NO. 03-2-00168-4 SUBPOENA DUCES TECUM

The State of Washington to:

THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY
Address: 139 French Administration Building, Room 422, Stadium Way, Pullman, WA 99164

You are commanded to transmit the following documents to the Court:

1. The records and related documents of the adjudication of rights and responsibilities conducted by the CGSRR (Drs. Howard Grimes, Sally Blank and James Harsh):

(a) The original documents of which Mr. Benjapon Sakkarapope submitted to each member of the CGSRR on September 1, 2000 (three sets of the documents; one for each member of the CGSRR).

(b) ALL other handwritten notes made by all individual members of the CGSRR at the meeting dated September 1, 2000, where the handwritten notes were not made on the original documents of which Mr. Benjapon Sakkarapope submitted to each member of the CGSRR on September 1, 2000.

(c) All records and related documents of any interviews, investigation, reviews, deliberation and/or

meetings conducted by Drs. Howard Grimes, Sally Blank, and/or James Harsh in the capacity of the CGSRR as to form the decision of September 19, 2000.

2. All records of communications (verbal, written or email or other forms of actions) between Dr. Richard Shumway and faculty members who have custody of the requested records, and Public Records Officer responsive to the Mr. Sakkarapope's record requests of July 6 and November 12, 2002.

3. All records and related documents of the 1997 doctoral qualifying examination (May-June) and the 1998 doctoral quantitative methods qualifying examination (May-June), Agricultural Economics Department. For the 1997 examination, the records include both Economic Theory and Quantitative Methods qualifying examinations. The records include, but not limit to, the following:

(a) Exam questions and answer keys.

(b) Individual students' written answers with evaluative comments and grades for each question. The records include all individual students who took the exams and all evaluative comments/grades by all panel evaluators as well as all Exam Performance of individual students. Any personal identification of the other students may be removed.

(c) Academic criteria, rules and procedure of determining an overall passing or failing grade.

(d) Records of the examination committee's meetings and decisions in regard to the doctoral qualifying examinations.

4. All records and related documents of evidence, opinions and recommendations obtained and/or used by Dr. Richard Shumway as the basis of his decision of August 10, 1998. The records also include all communications between Dr. Shumway and faculty members in regard to the appeal of July 22,1998.

5. All records and related documents of evidence, opinions and recommendations obtained and/or used by Dr. Paul Barkley (Interim Chair) in regard to his decision of Mr. Sakkarapope's admission to the doctoral program of the department during June-August 1997.
6. All records and related documents of the 2000 IIDP preliminary written examination—questions (January 12 and 14, 2000), student answers with evaluative comments, answer keys, evaluation criteria, and other relevant documents, administered by Drs. Kenneth Duft and Li-Ming Han, including Harry Turtle.
7. All records and related documents of the February 11, 2000, IIDP preliminary oral examination--questions, student answers with evaluative comments, answer keys, evaluation criteria, and other relevant documents, administered by the examination committee chaired by Dr. Kenneth Duft.
8. All records, observation handwritten notes and related documents of the February 11, 2000, IIDP preliminary oral examination created and administered by Dr. Alan Black in the capacity of the Graduate School's Representative.
9. As indicated in Dr. Kenneth Duft's letter (no date) responsive to Dr. Herbert Hill's email dated 5/5/2000, the records and related documents:

(a) As indicated in the answer to Question #1, "personal copies of the text books and related materials from which all my questions were extracted."

(b) As indicated in the answer to Question# 3, "several portions of the written qualifying examinations."

10. All records and related documents of any interviews, investigation, reviews, deliberation and/or meetings conducted by the Student Records Committee and/or its members in the brief adjudicative proceeding of March 27, 2002.

11. The record as indicated in the attachment of the Dr. Howard Grimes' memorandum of January 10, 2003, to the Provost that "HDG See Sheet 2."
The records and/or related documents above do not include any portions of which were already filed with the Court on September 22, 2003.
You are commanded to file the records and related documents above by 3:00PM on January 2, 2004.

DATED this 8th of December, 2003.

s/Brenda G. Clonings
By Deputy Clerk
Whitman County Superior Court Clerk

Person Requesting subpoena:
Name: Mr. Benjapon Sakkarapope, Petitioner
Address: 430 NE Oak #2, Pullman, WA 99163
Telephone Number: 509-332-8911

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondent.	NO. 03-2-00168-4 SUBPOENA DUCES TECUM

The State of Washington to:
THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY
Address: 139 French Administration Building, Room 422, Stadium Way, Pullman, WA 99164

You are commanded to transmit the following documents to the Court:

1. Records of a report from the WSU Police Department in regard to the allegation with a Disruption and Violation of Federal Law as indicated in Assistant Dean of Students Joan E. Menzies of January 26, 1995. The records shall include, but not limit to, the following:
    a. Written statements or transcript of verbal statements of the allegations made by Mr. Greg Black and other faculty/staff members of the Department of Marketing;
    b. Any documentation prepared or witnessed by Doug Robinsons, a court appointed attorney, on January 12, 1995; and
    c. A report of apartment search by WSU Police Department on January 12, 1995.
2. Records of a review of the allegation with a Disruption and Violation of Federal Law as referred to in Assistant

Dean of Students Joan E. Menzies of February 14, 1995. The records shall include, but not limit to, any records of mediation by Mr. Oliver Bangera, the President of the GPSA at that time.

3. Records of the matters in regard to Mr. Benjapon Sakkarapope while he was a graduate student in the Department of Marketing (1993-1995). The records shall include, but not limit to, the following:
    a. Documentation of any communication/transaction between Mr. Sakkarapope and Dr. James McCullough and Dr. Patriya Tansuhaj as well as other faculty and staff members;
    b. Documentation of Mr. Sakkarapope's appeals filed with the department and of reviews of the appeal matters by the Department and Associate Dean Ernie Stromsdorfer, the College of Business and Economics;
    c. Documentation of communications among Drs. James McCullough, Patriya Tansuhaj, Darrel Muehling, and Ms. Kathleen M. Bodley (Associcate Director of the International Program at that time) as well as other faculty members in regard to Mr. Sakkarapope's funding at WSU in 1994. The records shall include, but not limit to, any documentation responsive to Mr. Sakkrapope's request dated June 6, 1994, addressed to Ms. Bodley; and
    d. Mr. Sakkarapope's annual evaluations made by the Department of Marketing.
4. Records of reviews of Mr. Benjapon Sakkarapope's appeals before the University Ombudsman, Mary Gallwey, dated September 29, 1994, and subsequent appeals through this office. The records shall include, but not limit to, all correspondences and materials created, obtained and reviewed by the Ombudsman.

    Note: The original of appeal documents submitted by Mr. Sakkarapope was returned to him, in which were

not included any other materials created, obtained and used by the Ombudsman when it was returned.

5. Records an admission arrangement to the graduate program in marketing for Mr. Benjapon Sakkarapope in 1992. The records shall include, but not limit to, the following:
    a. Any written communications among Dean Thawee Dhanatrakul and Associate Dean for Academic Affairs Benjapon Sakkarapope, Dr. James McCullough and Dr. Patriya Tansuhaj as well as other WSU faculty and staffs members in regard to an admission arrangement for Mr. Sakkarapope; and
    b. An meeting minute of a student exchange program between WSU and Prince of Songkla University (PSU), Thailand. The meeting was held on May 28, 1992, at the PSU. Dr. Patriya Tanshuhaj was the WSU's representative at the meeting. The record may be either in Thai or English version made by Dr. Tansuhaj or other staffs; and
    c. Any other memorandum of understanding between WSU and PSU made in 1992, which is related to Mr. Sakkarapope's admission to a graduate program in marketing at WSU.
6. Records of the disputed matters between the Department of Marketing and Ms. Somdee Hongphisanvivat. The records shall include, but not limit to, a police report on the incident in Summer-Fall 1993.
7. Mr. Sakkarapope's medical records at WSU's Health and Wellness Services. The records shall include, but not limit to, the records of emergency unit.
8. Mr. Sakkarapope's records of counseling service at WSU's Hotline Crisis.
9. A copy of a manuscript titled, "Advertising's Effect on Brand-Switching Behavior: The Role of Top-of-Mind Brand Awareness," authored by Benjapon Sakkarapope

and Eric R. Spangenberg from Dr. Eric R. Spangenberg's annual or tenure review file in 1993-4.

The records and/or related documents above do not include any portions of which were already filed with the Court. You are commanded to serve upon the Petitioner and file the records and related documents above by 3:00PM on January 21, 2004. The Court encourages you to serve the Petitioner earlier to allow a pro se more time to prepare his responses to the Motion for Summary Judgment for the hearing on February 6, 2004.

DATED this 12th of January, 2004.

s/Brenda G. Clonings
By Deputy Clerk
Whitman County Superior Court Clerk

Person Requesting subpoena:
Name: Mr. Benjapon Sakkarapope, Petitioner
Address: 430 NE Oak #2, Pullman, WA 99163
Telephone Number: 509-332-8911

FILED
JAN 16 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 03-2-00168-4 **ORDER ON OBJECTIONS TO SUBPOENA DUCES TECUM AND MOTION TO QUASH**

This matter came before the Court on Washington State Universities motion for an order quashing the subpoena issued December 8, 2003 (Subpoena), sealing the examinations transmitted January 2, 2004 until further order of the Court.

The Court heard the oral argument of the counsel for Washington State University and Petitioner Benjapon Sakkarapope, considered the pleadings filed in this action and thecontent of the Supoena, the Declaration of Richard Shumway, the Declaration of Kirsten Pauli, the Declaration of Counsel, the documents and records filed January 2, 2004 and the pages of the Certified Record cited in the Declarations and pleadings.

The Court FINDS that:

(1) The Subpoena improperly reduced the time for respondeing to discovery from 30 to 25 days;

(2) The Subpoena is discovery related solely to Petitioner's claims regarding the Public Records Act and called for items that WSU has not released to Petitioner on his public request

for the documents dated July 6, 2003 based in part on statutory exemptions in the Public Records Act.
(3) The Subpoena required WSU to produce and file with the Court examinations and answer keys as well as information on all individuals students who took preliminary doctoral program examinations taken by the Petitioner in the Agricultural and Resource Economics program, including the students' written answers, with evaluative comments ad grades for each answer. The Subpoena did not require that the students' names be included, however, very few students took the examination and those students may be easiiy identifiable based on the information released.
Based on the above findings it is ORDERED:
(1) Respondent's motion is granted;
(2) The Subpoena issued December 8, 2003 *and the Subpoena issued January 12, 2004 are quashed*[*].
(3) The examinations transmitted January 2, 2004 will remain sealed until further order of the Court;
(4) Respondent need not provide to the Petitioner or file with the Court records on individual students other than Mr. Sakkarapope, examinations or answer keys until further order of the Court.
DATED this 16th day of January, 2004.

s/ David Frazier
JUDGE

[*] The italic text is originally in hand-written.

FILED
MAR 5 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 03-2-00168-4 **ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the Honorable David Frazier, Judge of the Whitman County Superior Court, on Respondents' motion for Summary Judgment. The matter was heard February 6, 2004. The Petitioner, Benjapon Sakkarapope, appeared pro se. Respondents State of Washington, the Board of Regents, and Washington State University were represented by Sheryl L. Gordon, Assistant Attorney General. The Court reviewed the pleadings, heard oral arguments from both parties, and considered the following documents and evidence:

1. Petition for Review and attachments;
2. Respondents' Motion for Summary Judgment and Memorandum in Support of Respondents' Motion for Summary Judgment;
3. Declaration of Counsel in Support of Motion for Summary Judgment and attachments;
4. Declarations of Richard Beckes, Robert C. Bates, Karen M. Fisher, Mary Furnari, Howard Grimes, and Kristen Pauli certifying the records;

5. The Certified Records transmitted to the Court on September 22, 2003;
6. Discovery submitted; and
7. Responsive pleadings of Petitioner filed February 5, 2004 (stricken as per memorandum opinion).

FINDINGS OF FACT

Based on the above-listed pleadings, arguments, documents and evidence, the Court makes and enters the following Findings of Fact.

1. In July of 1999, Mr. Sakkarapope began trying to obtain a Master of Science in Statistics (M.S.) degree at Washington State University (WSU or University).

2. WSU Graduate School policy requires all students to complete master's degrees within six years of the *earliest credits* used to satisfy the degree requirements.

3. Mr. Sakkarapope obtained the Graduate School's permission to count the credits he earned at WSU in 1994 toward his M.S. degree. Allowing the 1994 credits gave Mr. Sakkarapope until the end of the spring semester to complete his M.S. degree.

4. Mr. Sakkarapope was aware of the need to complete the M.S. degree on time and he used that requirement to apply for financial aid for the spring 2001 semester, stating in his application that "This Spring 2001 semester is my last semester to complete a master[sic] degree in statistics."

5. Mr. Sakkarapope did not complete his M.S. degree by the end of the spring 2001 semester. The department in which he was studying extended the deadline to August 2002.

6. The Dean of the Graduate School gave Mr. Sakkarapope permission to enroll for less than full-time (under-enroll) for one semester, fall 2000.

7. Mr. Sakkarapope was not given permission to under-enroll for any other semester.

8. Mr. Sakkarapope did not enroll enough credits to be full-time for several semesters, including fall 2002.

9. In fall 2002, Dr. Howard Grimes, Dean of the Graduate School, became aware that Mr. Sakkarapope was under-enrolled and had not completed his M.S. degree on time.
10. Dr. Grimes had the authority to decide whether Mr. Sakkarapope was allowed an extension of time complete his M.S. degree requirements.
11. Mr. Sakkarapope's advisor asked Dr. Grimes for additional extension of time for Mr. Sakkarapope to complete his M.S. degree requirements. Dr. Grimes determined that Mr. Sakkarapope was not making adequate progress toward his M.S. degree and was under-enrolled, and thus was in violation of Graduate School policy.
12. On December 18, 2002, Dr. Grimes granted the request for extension and set a new deadline for completion of *January 27, 2003*. The new deadline set by Dr. Grimes was reasonable. In setting the deadline, Dr. Grimes considered Mr. Sakkarapope's statement that he had been in Thailand on family business for part of the fall semester and the amount of work Mr. Sakkarapope must do to successfully complete the M.S. program.
13. Mr. Sakkarapope had the opportunity to complete the work necessary for the M.S. degree and graduate.
14. Dr. Grimes informed Mr. Sakkarapope of his academic deficiencies. Mr. Sakkarapope had an opportunity to respond to Dr. Grimes regarding his academic deficiencies. Mr. Sakkarapope was timely informed of the deadline and requirements to correct those deficiencies and complete his M.S. program.
15. Dr. Grimes granted and set reasonable conditions and requirements for the extension and communicated those to Mr. Sakkarapope. Dr. Grimes required that by January 27, 2003, Mr. Sakkarapope was to complete his M.S. program (a short paper), apply for graduation in the M.S. program, and schedule his project defense. Mr. Sakkarapope only needed to successfully complete these tasks to be eligible to graduate and receive the M.S. degree.

16. Mr. Sakkarapope refused to do any of the remaining tasks for completion of his M.S. degree. He wrote letters to Dr. Grimes indicating he would not comply with the deadline, and stating that he did not think Dr. Grimes had the authority to set a deadline. However, Dr. Grimes, acting in his capacity as Dean of the Graduate School, had the authority to make this decision and did so according to Graduate School policies and procedures.

17. On January 28, 2003, Mr. Sakkarapope had not accomplished any of the remaining tasks to earn his M.S. degree. Dr. Grimes then directed the Graduate School and Registrar to dismiss Mr. Sakkarapope from the M.S. program. He was not enrolled in any other program at WSU, and on January 31, 2003, WSU terminated his enrollment at the University.

18. WSU's dismissal of Mr. Sakkarapope from his M.S. program was an academic dismissal.

19. Dr. Grimes used his academic expertise and experience to make a determination in accordance with WSU policy that Mr. Sakkarapope was unlikely to successfully complete the M.S. program. Dr. Grimes made his decisions honestly, in good faith, and with due consideration of the facts and circumstances regarding Mr. Sakkarapope.

20. Mr. Sakkarapope presented no admissible evidence demonstrating a genuine issue of material fact concerning whether WSU breached his educational contract or whether WSU deprived him of due process of law when it dismissed him from the M.S. program.

21. WSU did not breach its educational contract with Mr. Sakkarapope by dismissing him from the M.S. program when he refused to complete the program after having been given an opportunity to do so.

22. On March 24, 1999, the Graduate School approved Mr. Sakkarapope's petition to attempt to obtain an Individual Interdisciplinary Doctoral Degree. This particular doctoral program is housed in the Graduate School.

23. The doctoral program required a candidate to take and pass a preliminary examination. On February 11, 2000, Mr. Sakkarapope had completed and failed both the written and oral portions of the preliminary examination.

24. Mr. Sakkarapope protested the outcome of the examination and requested the Graduate School review it. The Graduate School Dean, Dr. Karen DePauw, had the matter investigated and reviewed by the faculty and a faculty committee. Based on that investigation and information, she decided to affirm Mr. Sakkarapope's failure and dismissed him from the doctoral program.

25. Mr. Sakkarapope requested the decision be reviewed by then Interim Provost Dr. Ronald Hopkins, as provided in the Graduate School's policies and procedures. Dr. Hopkins reviewed the matter and issued a final decision letter based on his review. That decision letter was provided to Mr. Sakkarapope on February 1, 2001 by mailing it to Mr. Sakkarapope at his proper address. It is undisputed that Mr. Sakkarapope timely received that letter. The letter specifically advised. Mr. Sakkarapope that this decision represented the University's final decision.

26. Mr. Sakkarapope did not present admissible evidence or authority that he did not have to file a Superior Court appeal of a final agency decision within 30 days after he received the decision.

27. Mr. Sakkarapope filed the Petition for Review in Whitman County Superior Court of WSU's action dismissing him from his doctoral program more than 30 days after he received the final agency decision mailed February 1, 2001. Mr. Sakkarapope's appeal was filed more than 30 days after he received the University's written rejections of his efforts to have the decisions reviewed by others, including the Board of Regents.

28. On March 14, 2002, at Mr. Sakkarapope's request, the Unviersity scheduled a Student Records Committee (SRC) to review the completeness and accuracy of his educational record that had been provided for his review under the

Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. pt. 99 (FERPA). The SRC held a Brief Adjudicative Proceeding on March 27, 2002, and reviewed M. Sakakrapope's records pursuant to WAC 504-21-040.

29. On April 5, 2002, the SRC issued an initial order in the matter and mailed that order to Mr. Sakkarapope at his proper address. It is undisputed that Mr. Sakkarapope timely received that letter. In that order, the SRC determined that Mr. Sakkarapope had been provided his entire educational record, except for some of his records from a Department of Agricultural and Resources Economics file. The SRC appended those records to its order. The decision letter stated that "with the inclusions in his letter, the University has fully complied with your request for the release of [your] educational records under FERPA." The decision also contained an express statement that Mr. Sakakrapope could come in and review his records. It also clearly informed him that under WAC 504-21-080, he had the right to submit a written view of the records to the Provost.

30. On September 23, 2002, Mr. Sakkarapope asked for review of the decision by the current Provost, Dr. Robert Bates. Dr. Bates reviewed the records and the initial order, and issued a final decision letter that was mailed to Mr. Sakkarapope at his proper address on November 6, 2002. It was undisputed that Mr. Sakkrapope timely received that letter. The November 6, 2002, final decision letter affirmed that SRC's initial decision and clearly informed Mr. Sakkarapope that he could review his education record at the Graduate School and the Department of Agriculture and Resources Economics. The letter also contained an express notice that this was the University's final decision, and a notice of Mr. Sakkarapope's right to appeal WSU's final decision to the Superior Court within 30 days in accordance with RCW 34.05.514 and .542.

31. Mr. Sakkarapope's Petition for Review of that decision was filed with the Whitman County Superior Court on July

23, 2003, more than 30 days after the received the decision letter.

32. Mr. Sakkarapope, wishing to initiate a public records dispute, included in public records dispute in his Petition for Review of the agency's actions, requesting relief under the Administrative Procedures Act, RCW 34.05.

33. Mr. WSU is prejudiced by the public records dispute before the Court as an administrative appeal because an appeal of an agency action is based on the record, and WSU is unable to present new evidence, including witness of affidavits in defense of its actions and responses to Mr. Sakkarapope's public records requests.

CONCLUSION OF LAW

Based on the findings above, the Court makes and entered the following Conclusions of Law:

1. No genuine issue of material fact exists in this action and WSU is entitled to a judgment as a matter of law.

2. The Court can review only final agency actions or orders under the Administrative Appeals Act. The only final agency actions or decisions set forth in the Petition for Review are the appeal of Mr. Sakkarapope's dismissal from his doctoral program, the appeal of Mr. Sakkarapope's dismissal from his M.S. program, and the order entered November 6, 2002 by the agency regarding the accuracy and completeness of the educational records provided to Mr. Sakkarapope.

3. This Court lack subject matter jurisdiction over the appeal of the November 6, 2002, final decision following a Brief Adjudicative Proceeding held March 27, 2002, to determine the accuracy and completeness of the educational records as provided to his pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. pt. 99 (FERPA), and WAC 504-21-040. Mr. Sakkarapope filed his judicial appeal beyond the statute of limitations set forth in RCW 34.05.

4. This Court lacks subject matter jurisdiction over the February 1, 2001, final agency action dismissing Mr. Sakkarapope on academic grounds from his doctoral

program. Mr. Sakkarapope filed his judicial appeal of that agency action beyond the statute of limitation set forth in RCW 34.05.

5. WSU's decision dismissing Mr. Sakkarapope from his M.S. program on academic grounds was not arbitrary and capricious.

6. WSU afforded Mr. Sakkarapope all process due before dismissing him on academic grounds from his M.S. program.

7. Mr. Sakkarapope did not meet his burden of demonstrating the invalidity of WSU's actions dismissing him from the M.S. program. WSU's academic dismissal of Mr. Sakkarapope from the M.S. program should be affirmed.

8. Mr. Sakkarapope's dispute regarding WSU's responses to his public records requests should be filed pursuant to RCW 42.17.340(1). It is therefore not properly before this Court and should be dismissed without prejudice.

ORDER

IT IS ORDERED that:

1. Respondents' Motion for Summary Judgment is granted;
2. The Petitioner's appeal of his dismissal from his Individual Interdisciplinary Doctoral Degree program on February 1, 2001, is dismissed for lack of subject matter jurisdiction.
3. The Petitioner's appeal of the order of November 6, 2002, determining that his educational record as provided to him under FERPA was accurate and complete is dismissed for lack of subject matter jurisdiction;
4. The Respondent's action of January 28, 2003, dismissing Mr. Sakkarapope from his Master of Science in Statistics program on academic grounds is affirmed; and
5. The Petitioner's causes of action against WSU regarding the Public Records Act are dismissed without prejudice as they are not properly before the Court.
6. *This is a final decision on the issues that were raised in the Summary Judgment hearing. This court will hear no further motions or applications from either party on these issues. Any objection, dispute or disagreement with this*

order must be addressed to the appellate court(s), not this trial court[*].

DATED this 5th of March, 2004

s/ David Frazier
Honorable David Frazier

[*] The item #6 of the order was originally in hand-written by the trial court as additional to the proposed order after Sakkarapope's objections to the proposed findings of facts and conclusion of law were heard at the presentment hearing of March 5, 2004.

FILED
FEB 17 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 03-2-00168-4 **MEMORANDUM DECISION ON MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the court on February 6, 2004 for a hearing on respondents' motion for summary judgment. Respondents (hereafter referred to as "WSU") appeared through Sheryl L. Gordon, Assistant Attorney General: petitioner (hereafter referred to as "Sakkarapope") appeared pro se. At the conclusion of Argument, the court took its decision under advisement for further review and consideration. Based on that review, the court hereby enters the following decision.

Procedural Background

The following procedural background is relevant to the present motion for summary judgment:

1. On July 23, 2003, Sakkarapope filed a Petition for Review seeking review of numerous actions, proceedings, and decisions made by officials at WSU concerning Sakkarapope and his status as a graduate student at the university. The petition also sought review of WSU's responses to several public records requests made by Sakkarapope, together with an award of monetary

compensation for personal injuries and damages to Sakkarapope's reputation.

2. Sakkarapope's Petition for Review specifically alleges that it is brought pursuant to RCW 34.05.510 et. seq. and RCW 42.17.340. The petition consists of 19 pages, together with 10 separate attachments consisting of a total of approximately 150 pages. The various attachments itemize and challenge the legality of numerous proceedings, decisions and actions taken by WSU. Attachment I to the petition, for instance, makes reference to 35 actions or decisions made by WSU officials, Attachment II relates to 7 decisions and actions of the WSU Student Records Committee, Attachment III pertains to 16 public records requests made by Sakkarapope, and Attachment IV lists WSU's denials of his public record requests.

3. As illustrated in Attachment V and VI to the Petition for Review, which are essentially timelines Sakkarapope prepared of activities and decisions involved in his appeal, almost all alleged action took place before June 15, 2003.

4. The casefile in this action presently consists of 17 separate court files that fill one large filing cabinet drawer in the office of the Whitman County Clerk. Most of these contain what WSU purports to be the certified record of underlying agency proceedings, although a large portion of the file pertains to discovery requests propounded by Sakkarapope and WSUs' responses thereto. This discovery relates to Sakkarapope's position that the certified record filed by WSU in this action is not accurate and complete, and involves his attempts to amend and supplement this record.

5. WSU's motion for summary judgment alleges that Sakkarapope's Petition for Review only addresses three final actions by WSU that would be subject to appeal under the Washington Administrative Procedure Act. RCW Chapter 34.05. According to WSU, these three final decisions were the following:

a. WSU's decision to dismiss Sakkarapope on academic grounds from the Individual Interdisciplinary Degree Doctoral Program (IIDP), citing page 2 of the Petition for Review, line 7-14.

b. WSU's decision to dismiss Sakkarapope on academic grounds from his Masters of Sciences in Statistics program, citing page 3 of the Petition for Review, lines 1-3.

c. WSU's decision that Sakkarapope's academic records is accurate pursuant to Family Educational Right and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99 (FERPA), and WAC 504-21-040, citing page 2 of the Petition for Review, lines 7-14.

6. In its summary judgment motion, WSU asks this court to dismiss the IIDP and FERPA challenges as untimely because Sakkarapope failed to file his appeal of those decisions within the statute of limitations or, in the alterantive, to affirm WSU's decision dismissing Sakkarapope from his IIDP and his Master of Science in Statistics programs on merits and as a matter of law. In addition, WSU seeks dismissal of Sakkarapope's appeal if WSU's responses to his public records requests on the grounds that such review is beyond the scope and authority of the Superior Court in the context of an administrative appeal under RCW Chapter 34.05.

7. Sakkarapope did not file his response to WSUs' summary judgment motion until February 5, 2004, the day immediately before the scheduled summary judgment hearing. That response is entitled Memorandum In Support of Petitioner's Defense. On February 6, 2004, he filed a document entitled Index of Certified Records.

8. In his response to WSU's summary judgment motion, Sakkarapope claims that his Petition for Review was timely filed, as he attempted to exhaust his administrative remedies by cumulatively appealing decisions that were made to various organizational levels at WSU, culminating in an eventual attempt in January of 2003 to have his concerns

heard at a meeting of the WSU Board of Regents. When the Board of Regents refused to consider his case, Sakkarapope filed a petition with the Governor in May of 2003. He also asserts, among other things, that he is not appealing or seeking this court's review of whether WSU fully complied with his request for the release of education records under FERPA, that the certified record filed by WSU in this matter is not complete, and that he has separately and properly joined his public records request issue under RCW 42.17.340 with his APA appeal of WSU's administrative decisions and actions.

Discussion

The court has spent considerable time reviewing the lengthy casefile in this matter, and in reviewing the pleading relating to the present motion. In all candor, the court finds Sakkarapope's original Petition for Review, his Memorandum in Support of Petitioner's Defense, and many of his other pleadings poorly written, unreasonably lengthy, confusing, and difficult to follow and understand. As stated earlier, the memorandum in Support of Petitioner's Defense, which is Sakkarapope's primary response to WSU's motion for summary judgment, was filed on day before the summary judgment motion was scheduled for hearing. As such, it is untimely under CR 56(c), and must therefore be stricken by the court in its consideration of the issues presented. Specifically, CR56(c) requires the party opposing summary judgment to file and serve responsive pleadings and other documentation "not later than 11 calendar days before the hearing." As a litigant appearing pro se, Sakkarapope is not entitled to special treatment, but is bound by the same rules of procedure and substantive law that apply to a litigant that is represented by counsel. *State v. Fritz*, 21 Wash. App. 354 (1978); *Bonney Lake v. Delany*, 22 Wash. App. 193 (1978); *Bly v. Henry*, 28 Wn. App. 469 (1980). Even if Sakkarapope's response were not stricken, however, the court's review of that document discloses that it presents little evidence, if any, that would raise a genuine issue of fact

material to the issues presented, and no valid legal authority that would support a denial of WSU's motion for summary judgment.

RCW 34.05.542(2) provides that a Petition for Review of an agency order must be file with the court within thirty days after service of the final order. Similarly, a Petition for Review of an agency action must be filed within thirty days after the agency action. RCW 34.05.542(3). These time requirements are jurisdictional—if the time limits are not met, the court lacks subject matter jurisdiction to hear the appeal, and the petition must be dismissed. *Tarabochia v. Town of Gig Harbor*, 28 Wn.App. 119 (1981).

Despite Sakkarapope's arguments to the contrary, WSU's final decision to terminate him from the IIDP was made and communicated to Sakkarapope on February 1, 2001. On that date, WSU Provost, Dr. Ronald Hopkins, sent Sakkarapope a letter affirming Dean DePauw's decision to dismiss Sakkarapope from the doctorate program (CR 273). The letter specifically advised Sakkarapope that this decision represented the Univeristy's final decision. Under RCW 34.05.542, therefore, Sakkarapope had thirty days from February 1, 2001 to file his Petition for Review with the Superior Court. His failure to file such a petition from approximately 28 months after this date deprives the court of jurisdiction to review WSU's decision. The fact that Sakkarapope disagreed with the provost and felt he was entitled to repeated reconsideration and review within various levels of WSU's organizational structure, including the Board of Regents, is without merit. Sakkarapope has presented no valid legal authority to support a right to such further review, or to consideration by the Governor's Office, and even if such right were found to exist, Sakkarapope's appeal is still untimely. In every instance where Sakkarapope sought further administrative review of his termination from the IIDP, WSU's written rejections of these efforts was received well over 30 days from the date of the Petition for Review was filed.

Despite statements in the Petition for Review to he contrary, Sakkarapope now asserts that he is not seeking judicial review of WSU's decisions relative to his educational records under FERPA. Even if he had south such review, the record undisputedly establishes that WSU's final decision on the accuracy and completeness of Sakkarapope's educational records was issued on November 6, 2002 (CR 620-21), and that the Petition for Review was not filed for some eight month thereafter. Like the IIDP appeal, such lengthy delay in seeking judicial review of this decision deprives the court of jurisdiction to hear and determine this case. The court will enter an order pursuant to both Sakkarapope's request and to WSU's motion for summary judgment, dismissing the FERPA questions as an issue for this court's review.

In his Petition for Review, Sakkarapope not only sought review of administrative decisions made by WSU under 34.05.510 et. seq., but he claimed that WSU violated the Open Public Records Act, and he sought relief for this violation pursuant to RCW 42.17.340. As WSU argues, however, an appeal under the APA is a review on the record, whereas an Open Public Records Act dispute is an original action initiated by an order to show cause. An Open Public Records Act Challenge is based not just on the agency record, but also upon the presentation of new evidence. RCW 34.05.558; RCW 42.17.340(1). Sakkarapope's issues pertaining to his public records requests are therefore not properly before the court, and are subject to summary dismissal without prejudice.

WSU additionally requests summary judgment affirming its decision dismissing Sakkarapope from his Master of Science in Statistics program. In support of this request, WSU refers the court to the administrative record that it filed and certified in this case. WSU argues that this record supports a finding that Sakkarapope refused to complete his Masters Degree after given a reasonable opportunity to do so, and that it was this refusal that led to his

dismissal from the Masters program. Once the moving party sustains the initial burden in a summary judgment proceeding of coming forward with evidence that the case involves no genuine issue of material fact, the burden then shifts to the nonmoving party to show that a genuine issue of material fact does exist. *Fischer-McReynolds v. Quasim*, 101 Wn. App. 801 (2000). If the nonmoving party cannot demonstrate that factual issues exist, summary judgment is appropriate. Id. The nonmoving party cannot simply rely on argument and the pleadings, but must come forward with admissible evidence. CR 56(c). Despite statements in the pleadings and arguments to the contrary, Sakkarapope has presented no admissible evidence to support his positions, and he as failed to raise a genuine issue of fact as to his claim that WSU breached his educational contract or that WSU deprived him of due process of law. This is particularly true given the fact that the court must strike his responsive pleading under CR 56(c). As a result. WSU is entitled to summary judgment affirming Sakkarapope's dismissal from his Master's program.

Decision and Order

Based on the foregoing discussion, it is hereby Ordered as follows:

1. WSU's motion for summary judgment dismissing that portion of Sakkarapope's Petition for Review seeking judicial review of WSU's decision to terminate Sakkarapope from the IIDP will be granted.

2. That portion of Sakkarapope's Petition for Review arguably seeking review of WSU's decision relating to the accuracy and completeness of his educational records under FERPA will be dismissed.

3. WSU's motion for summary judgment dismissaing that portion of Sakkarapope's Petition for Review seeking review of WSU decisions under the Open Public Records Act will be granted. Such dismissal will be without prejudice to Sakkarapope's right, if any, to bring an independent action under RCW 42.17.340.

4. WSU's motion for summary judgment affirming its decision dismissing Sakkarapope from his Master of Science in Statistics program will be granted.

5. Counsel for WSU shall prepare an order in accordance with CR 56 that is consistent with this decision and, if necessary, shall note the dame for presentment.

DATED: February 17, 2004.

s/David Frazier
JUDGE

Washington State University
Office of Registrar, P.O. Box 641035,
Pullman, WA 99164-1035

March 14, 2002

Benjapon Sakkarapope
430 NE Oak Street Apartment 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope,

This correspondence serves as your official notice of the University's Student Records Committee hearing regarding your request for records. **The hearing will be held at 2:00 p.m. on Wednesday, March 27, 2002.** The hearing will be conducted in the conference room located in the Office of Student Affairs, room 360, in the Lighty Student Services Building.

The University Student Records Committee is composed of one faculty member, one student member, one administrative member and on Student Affairs' faculty member, including the committee chair. This committee has been screened to ensure they are not biased in the matter.

As you know this hearing is not a forum to review the Graduate School's academic decision. It is an opportunity to review your request for student records and determine if the University has fulfilled that request.

An advisor of your choice may be accompany you to this hearing, but that person is not allowed to address the committee directly. You may submit additional written statements in advance of the hearing for the committee to review. This material, if any, should be submitted no later than 5:00 p.m. on Monday, March 25, 2002, to the Office of

the Registrar located in French Administration Building, room 346. The University's student Records Committee shall issues a decision within a reasonable time following the hearing.

Please contact my office at 335-2531 if you have questions about the hearing.

Sincerely,
s/ Richard A. Backes
Richard A. Backes
Senor Associate Registra

cc: Dr. Charlene Jaeger
Mr. Steve Vinsonhaler

Washington State University
Office of Registrar
P.O. Box 641035
Pullman, WA 99164-1035

April 5, 2002

Benjapon Sakkarapope
430 NE Oak Street Apartment 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope,

On March 27, 2002, you appeared before the Universiry's Student Records Committee to appeal whether the University had released all requested educational records related to the preliminary examination for your PhD program and your subsequent appeals of the result of that examination. Your letter to the committee dated March 21, 2002 lists fourteen instances of correspondence in which you request copies of you education records. Much of what you request in your letter to this committee have to do with lists of records, correspondence and evaluative criteria for which the University does not have a record. FERPA was designed to allow students to have access to their education records. Om most of the cases you cite in your letter, no education records exists. However, based in your comments in the hearing, we investigated several specific records that may be in existence. These specific records and the committee's conclusions are noted below.

1. Written Examination, including your answers and evaluator's comments. The written examination and your answers were located in your file in the Agricultural Economics department. These have been copied and are included in this letter. The committee has determined that no record of evaluator's comments exists now or ever existed.

2. Ballots from your oral examination of February 11, 2000. These ballots were released for you previously and did not contain any comments from committee members. This committee has determined that no record of committee member comments exists now though they may have existed at one time (though in sole possession of the committee member who created the comments). A copy of the examination decision dated February 11, 2000, is included in this letter.
3. Response to Dr. Herb Hill from Dr. Zhange regarding the four questions surrounding your appeal. This record does not exist and was never received by Dr. Hill and therefore never became part of your record nor the appeal process.
4. Memorandum from Dr. Ken Duft to preliminary examination committee members dated January 26, 2000. This memorandum does not exist and is no maintained by the University.
5. Records from your appeals of the preliminary examination results to Dr. Herb Hill of the Graduate School. All records related to this appeals have been released to you, including the e-mail and/or memorandum sent by committee members in response to Dr. Hill's four questions, and Dr. Hill's memorandum dates May 19, 2000. A copy of Dr. Hill's memorandum is included in this letter. No other records were created and/or maintained as part of this appeal.
6. Records from your appeal to the Committee on Graduate Student Rights and Responsibilities (CGSRR). All records related to this appeal have been released to you, including the e-mail correspondence from the Graduate School and the memorandum from the CGSRR to the Dean of the Graduate School dated September 19, 2000. A copy of the memorandum is

included in this letter. No other records were created and/or maintained as part of this appeal.

7. Records from your appeal to the Interim Provost. All records related to this appeal have been released to you including the memorandum from the Interim Provost to you dated February 1, 2001. A copy is included in this letter. No other records were created and/or maintained as part of this appeal.

With the inclusions in this letter, the University has fully complied with your request for the release of education records under FERPA. In addition, you are welcome at any time to peruse your own files both at the Graduate School and at the Agricultural Economics department.

Pursuant to WAC 504-21-080 you have a right to submit a written view regarding your education records to the provost, who shall review the appeal and take necessary action which may include reconsideration by the student records officer or inclusion of the written objection or summary thereof in such education records.

If you have questions regarding this committee's decision or would like to discuss it further, please contact me at 335-1139.

Sincerely,
s/ Richard A. Backes
Richard A. Backes
Chair, University's Student Records Committee

cc: Dr. Charlene Jaeger
Dr. Robert Bates
Mr. Steve Vinsonhaler
University Student Records Committee
File

Washington State University
Office of Registrar, P.O. Box 641035,
Pullman, WA 99164-1035

July 4, 2002

Benjapon Sakkarapope
430 NE Oak Street Apartment 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope,

I received your letter of June 22, 2002 stating you concerns about the release of your education records to you. You indicated that pages 13 through 16 of your written examination were missing. These specific pages are not maintained in your file in the Agricultural Economics department nor in your file in the Graduate School office. In understand, however, that these pages are being disclosed pursuant to your most recent public records request.

As stated in my letter of April 5, 2002, you may submit a written view regarding your education records to the provost, who shall review the appeal and take necessary action, which may include reconsideration by the student records officer or inclusion of the written objection or summary thereof in such education records.

If you have questions regarding this information, please contact me at 335-1649.

Sincerely,
s/ Richard A. Backes
Richard A. Backes
Chair, University's Student Records Committee
cc: Dr. Charlene Jaeger, Dr. Robert Bates,
University Student Records Committee, File

Washington State University
Office of the Vice President for Business Affairs,
432 French Administration Building, P.O. Box 641045,
Pullman, WA 99164-1045

July 19, 2002

Mr. Benjapon Sakkarapope
430 NE Ock #2
Pullman, WA 99163

Re: Public Records Request # 02-84

Dear Mr. Sakkarapope:

Regarding your letter of July 17, 2002, FERPA (Family Educational Rights and Privacy Act) prohibits the release or disclosure of student records or information contained in Student Records without the prior consent of the student to whom the information relates. I have enclosed the section of the United States Code that states that funding will be withheld from institutions that release personally identifiable information about students. Given the small number of students that took these examinations, the answers and comments contained in the examination are personally identifiable information. I have enclosed the relevant definitions of "personally identifiable information" from the CFR. I have enclosed a technical assistance letter from the FERPA Compliance Office at the Department of Education regarding this issue. If you require further information regarding the release of student education records, I recommend that you contact that office.

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4605

Regarding the examination questions and answers that you requested, I have already asked that they be provided with the other material responsive to your Public Records Request. They will be reviewed for exempt material when they are received. As I said in my letter, all material specific to you will be provided, if the records are of examinations that you took, and the records still exist, I see no reason why they would not be provided. The department confirms that the examinations are unique to the academic year, but that some questions have been used more than once and may be used again in the future.

If you wish to appeal the denial of any student records, you may request a FERPA hearing through the Office of Student Affairs or the Registrar.

Sincerely,
s/ Kristen Pauli
Kirsten Pauli
Program Administrative manager

Washington State University,
Office of the Provost, P.O. Box. 641046
Pullman, WA 99164-1046

November 6, 2002

Benjapon Sakkarapope
430 NE Oak Street #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

Under The Family Educational Rights and Privacy Act (FERPA) students may request amendment of their educational records if they believe such records are inaccurate or misleading. When you raised questions regarding your educational records, the Vice President for Student Affairs officially appointed the Student Records Committee (Committee) and gave that Committee authority to consider your request. Importantly, the Committee was not authorized to review the University's academic decision to disenroll you from the doctoral program. WAC 504-21-040(3)(d) provides: "The student records committee shall not review any matter regarding the appropriateness of official academic grades." Additionally, the academic decision to disenroll you wad finalized on February 1, 2001.

As to your concerns regarding your student records, it appears that you did not directly dispute the accuracy or truthfulness of your educational record, but alleged that WSU had not disclosed certain student records to you upon request. The Committee, pursuant to WAC 504-04-010(4), held a brief adjudicative proceeding on March 27, 2002, to consider your claims. Following that hearing, it investigated your claims and was unable to locate records other than those that had already been provided to you by the Public Records Officer, the Graduate School, and the Agricultural

Economics Department*. It provided you with duplicate copies of some of those documents, and noted that you are welcome to peruse your own files at the Graduate School or the Agricultural Economics Department at any time.

I have reviewed the records related to your appeal of the FERPA hearing, including the tape of the hearing held on March 27, and the decision issued by the Student Records Committee on April 5, 2002. I find that the Committee was properly constituted and that it had authority to hear and decide your case. I find that the hearing was conducted in accordance with the procedure authorized by WAC 504-04-010(4). I also find that your educational file is accurate and complete, and affirm the Committee's decision as set forth in its letter of April 5, 2002.

This letter is the University's final decision in the matter of your student records. You have not additional rights to appeals this decision within Washington State University. You may, within thirty days of the date your receive this letter, appeal this decision to the Whitman County Superior Court in accordance with RCW 34.05.514 and 34.05.542.

Sincerely,
s/ Robert C. Bates
Robert C. Bates.
Provost and Academic Vice President

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* I understand that one additional document, a professor's personal notes upon your oral examination, we later located by the WSU Public Records Office pursuant to your public records request, and that record has been provide to you. You have not requested that document be made part of your official University file. Accordingly, it will not be made part of that file, unless you so request. Should any additional documents related to your public records requests be located, they will be provided to you by the Public Records Officer.

Washington State University,
Office of the Provost, P.O. Box. 641046
Pullman, WA 99164-1046

January 10, 2003

Benjapon Sakkarapope
430 NE Oak Street #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

On November 6, 2002, the Provost's Office informed you of the University decision in your case. In two separate letters you were explicitly told that you had no further appeal rights within the University and all procedural remedies had been exhausted at the administrative level.

I have received the correspondence you forward to President Rawlins and the Graduate School. It is clear from your letters that you understood that all your requests have been denied. The letters of November 6, 2002, also informed you of your right to appeal the University's final decision to the Whitman County Superior Court within 30 days. It is evidently your subsequent correspondence that you understand that legal right, but continue to dispute the finality of the University's final action in this matter.

The University had no obligation to provide you with any further explanation and will no longer respond to your letters related to this matter. This matter is officially closed.

Sincerely,
s/ Robert C. Bates
Robert C. Bates.
Provost

United States Department of Education
Office of the General Counsel,
400 marlyland Ave., SW.,
Washington, D.C. 20202-2110

December 17, 2002

Benjapon Sakkarapope
430 NE Oak Street Apt. 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope:

I am in receipt of your December 5, 2003 letters to the Secretary and the General Counsel of the United States Department of Education (Department) wherein you request an adjudication under the Administrative procedure Act (APA) based upon a complaint you filed with the Department's Family Policy Compliance Office (FPCO).

Pursuant to the Department's requirements at 34 CFR Part 99, the Secretary has delegated his authority to investigate, process, and review complaints involving the Family Educational Rights and Privacy Act (FERPA) to FPCO. Accordingly, you must direct you complaint to FPCO as prescribed by the Department's regulations and FPCO's letter to you dated December 8, 2003. (Attached).

Please also be advised that the Department's regulations do not afford you with a reight to appeal or otherwise contest FPCO's decisions with regard to complaints filed under 34 CFR Part 99. Thus, you do not have right to an adjudication by the Secretary under the APA. Should you have any further questions, you should direct them to FPCO at 202-260-3887.

Sincerely,
s/ Edmond J. Trepacz, II
General Attorney

430 NE Oak #2
Pullman, WA 99163
Phone: 509-332-8911

January 7, 2004

Secretary Rod Paige
Office of the Secretary,
U.S. Department of Education,
400 Maryland Avenue SW,
Washington, DC 20202-4605

Dear Secretary Paige:

This letter serves as my written request for review of agency's denial my petition for an adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. 554, and 34 CFR 99.60 et al. served upon the United States Secretary of Department of Education.

On December 5, 2003, I served upon you a petition for an adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. 554, and 34 CFR 99.60 et al. to consider and review the decisions and actions made by the Family Policy Compliance Office (FPCO), the U.S. Department of Education, and Washington State University in the complaints of violations of rights under Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99, and to enforce the FPCO and Washington State University complying with statutory or regulatory provisions of FERPA.

On December 17, 2003, General Attorney Edmond J. Trepacz, II denied my petition on your behalf. I believe the denial letter contains inaccurate understanding of the matters brought before you and provides misleading interpretation and application of laws. I also believe the denial has violated my rights under the Administrative Procedure Act, 5 U.S.C.

554, and 34 CFR 99, as well as other provisions of relevant laws and the constitutions.

As indicated in his denial, the statement, "Accordingly, you must direct your complaint to FPCO as prescribed by the Department's regulations and FPCO's letter to you dated December 8, 2003," is misleading and does not show good faith of the Counsel as a professional in interpreting the status of the matters and my intention as described in the Petition dated December 5, 2003. The facts are that:

1. I did file my original complaint to the FPCO on September 27, 2002.

2. I did file my complaints to FPCO as prescribed by the Department's regulations and FPCO's letter to me dated November 27, 2002. The complaint was revised accordingly into nine separate allegations/complaints. See the Petition for An Adjudication filed with the General Counsel.

3. After my unsuccessful attempt to follow-up of the complaints over a year, it was my belief that the FPCO was sufficiently afforded opportunities to perform its duties as described in 34 CFR 99. I, then, timely served upon you the Petition for an adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. 554, and 34 CFR 99.60 et al. on December 5, 2003. The Petition reached the Office of the General Counsel on December 8, 2003.

4. My last follow-up of the complaints with the FPCO was made on Septempber 18, 2003. I received no response. The FPCO never provided any written decision in regard to my nine complaints. Then, on November 17, 2003, I served upon the FPCO of my notification of its decisions and actions deemed denial.

5. The FPCO issued the letter dated December 8, 2003, as the counsel referred to, and instructed me to revise my complaints again; this simply means that the matter was unfairly forced to move back to the initial stage as of the FPCO's letter dated November 17, 2002. It is reasonable to believe that the FPCO's response dated December 8, 2003,

was made after it had learned that the Petition was already reached the Office of General Counsel. The response was not reasonable, and not made in good faith. The action of December 8, 2003, was to excuse itself from its duties and obligations and then unfairly put the blame on me.

6. On December 12, 2003, I made my objection to the FPCO's December 8, 2003, letter.

7. As of December 8, 2003, the status of the matter has been moved beyond the FPCO.

The comprehensive documentation in regard to the matters for your review was provided with the Petition for An Adjudication. Please obtain and secure the documents for your review from the Offices of the General Counsel and the FPCO.

I also believe that the statements, "the Department's regulations do not afford you with a right to appeal or otherwise contest FPCO's decisions with regard to complaints filed under 34 CFR Part 99. Thus, you do not have right to an adjudication by the Secretary under APA," are misleading and misinterpreting the regulation and the APA. Nothing in the regulation and the APA suggests or implies that I do not have the right. Nothing shows the FPCO is exempt from the APA. The officials of the FPCO are federal employees; then, their decisions and actions in the capacity of the federal employees are the subject matters under the APA. The FPCO is not an office of dictator under the Constitution of the United States of America. The conducts of the FPCO's officials are under the Secretary's authority and delegation.

Therefore, I request for your review of the denial made by your General Counsel, and the FPCO's decisions and actions in regard to my complaints. I also request you provide your decision with specific views/opinions and with explicit citation of laws in regard to my right under the FERPA and

the APA, and the matters described in the Petition and the Counsel's denial. Your views/opinion and decision shall include explicit justification of whether the FPCO and Washington State University have complied with its duties and the regulations.

Again, I request an adjudicative proceeding be promptly commenced. The place shall be held in your regional office in the State of Washington or nearby where is closer to my residence. In such case that an adjudication is not granted and/or your review is denied, I request the U.S. Department of Education timely notify me in writing, including any other administrative relief/review available other than judicial reviews under the Administrative Procedure Act.

Finally, I request the Department of Education maintain and secure all agency records of the matters in regard to my complaints for potential judicial reviews. The Department shall not remove, discard and/or destroy any part or whole of the agency records and related materials until all the dispute matters are legally finalized. If you need further information, please feel free to contact me. Thank you very much for your consideration.

Sincerely,
s/B. Sakkarapope
Benjapon Sakkarapope

United States Department of Education
Office of Innovation and Improvement,
400 Marlyland Ave., SW., Washington, D.C. 20202

January 20, 2003

Benjapon Sakkarapope
430 NE Oak Street Apt.# 2
Pullman, WA 99163-4143

Dear Mr. Sakkarapope:

This letter is in response to your December 19, 2003 letter to the United States Department of Education's (Department's) Family Policy and Compliance Office (Office) in which you allege that your rights under the Family Educational Rights and Privacy Act (FERPA) were violated. Specifically, you alleged that Washington State University (University) denied you access to certain of your education records. This letter also responses to your January 7, 2004 letter to the Secretary of Education requesting an appeal based upon your dissatisfaction with the December 17, 2003 letter from the Department's Office of the General Counsel advising you that you have no appeal rights under the Administrative Procedure Act or Department regulations.

As discussed in our December 8, 2003 response to you (see enclosed), FERPA does not require a school to provide information to a student that is not maintained in the student's education records, nor does FERPA obligate a school to create education records in response to s student's request. Without evidence that a University maintains specific education records, there is no basis for this Office to investigate the alleged failure by the University to comply with your requests for access to your education records. Our attempt at reviewing your complaint was hindered by the sheer volume of your submissions along with the presence of extraneous and irrelevant information. However, in an affort to assist you, we requested in several letters-including out

December 8, 2003 letter, that you revise your complaints to include only relevant supporting documents. Addiitonally, we offered you the opportunity to respond in writing within three weeks of your receipt of our December 8, 2003 letter, and further offered you the opportunity to discuss this matter with our staff via telephone on order to assist us in responding to your complaint and concerns. Despite our best efforts, you failed to contact this Office or to provide us with any additional evidence or information regarding your allegations as requested in our December 8, 2003 letter. Rather, you stated in your December 19, 2003 letter to use that you "have no reason and intention to make any further revision of [your] complaints" Therefore, we are closing this matter without a finding.

With regard to your January 7 letter requesting a review of the Department's denial of an adjudication under the Administrative Procedure Act (APA), the December 17, 2003 letter to you from the Office of the General Counsel (see enclosed) very clearly explains that you do n have a right to an adjudication by the Secretary under the APA and that no further action will be taken by the Department regarding your requested adjudication. As also explained to you in that same letter, you do not have a right to appeal or otherwise contest this Office's decision with respect to complaints filed under FERPA. Thus, in the absence of a legal right to appeal this matter, any further requests, appeals, or correspondence to the Department seeking to invoke legal rights that are non existence in this context will not be acknowledged.

I sincerely hope the above information provide is helpful in further explaining the scope and limitations of you rights under FERPA as they relate to this matter.

Sincerely.

s/ LeRoy S. Rooker

Director, Family Policy Compliance Office

Enclosure

FILED
JUN 08 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; et al., Defendants-Appellees.	No. 04-35643 D.C. # CV-04-00074-JLQ Eastern Washington (Spokane) **ORDER**

Before: FERNANDEZ, RYMER, and BYBEE,Circuit Judges

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further fillings will be accepted in this closed case.

U.S.C. TITLE 5, PART I , CHAPTER 5
SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

§ 551. Definitions (Release date: 2004-01-16)

For the purpose of this subchapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641 (b)(2), of title 50, appendix;

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or

prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(6) "order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) "adjudication" means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;
(12) "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of this section;
(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and
(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

§ 554. Adjudications (Release date: 2004-01-16)
(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—
(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;
(2) the selection or tenure of an employee, except a [1] administrative law judge appointed under section 3105 of this title;
(3) proceedings in which decisions rest solely on inspections, tests, or elections;
(4) the conduct of military or foreign affairs functions;
(5) cases in which an agency is acting as an agent for a court; or
(6) the certification of worker representatives.
(b) Persons entitled to notice of an agency hearing shall be timely informed of—
(1) the time, place, and nature of the hearing;
(2) the legal authority and jurisdiction under which the hearing is to be held; and
(3) the matters of fact and law asserted.
When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues

controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

§ 555. Ancillary matters (Release date: 2004-01-16)
(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.
(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.
(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.
(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall

sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

U.S.C. TITLE 5, PART I, CHAPTER 7—JUDICIAL REVIEW

§ 701. Application; definitions (Release date: 2004-01-16)

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641 (b)(2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

§ 702. Right of review (Release date: 2004-01-16)

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein

(1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or

(2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

§ 703. Form and venue of proceeding (Release date: 2004-01-16)

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a

court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

§ 704. Actions reviewable (Release date: 2004-01-16)
Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

§ 706. Scope of review (Release date: 2004-01-16)
To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—
(1) compel agency action unlawfully withheld or unreasonably delayed; and
(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Chapter 34.05 RCW
ADMINISTRATIVE PROCEDURE ACT

RCW 34.05.010 Definitions.
The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar

statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

.....

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

.....

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or

repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

.....

[1997 c 126 § 2; 1992 c 44 § 10; 1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW 34.04.010.]

NOTES:

Effective dates -- Severability -- 1992 c 44: See RCW 42.41.901 and 42.41.902.

Effective dates -- 1989 c 175: "Sections 1 through 35 and 37 through 185 of this act are necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect on July 1, 1989. Section 36 of this act shall take effect on July 1, 1990." [1989 c 175 § 186.]

Severability -- 1982 c 10: See note following RCW 6.13.080.

Legislative affirmation -- 1981 c 324: "The legislature affirms that all rule-making authority of state agencies and institutions of higher education is a function delegated by the legislature, and as such, shall be exercised pursuant to the conditions and restrictions contained in this act." [1981 c 324 § 1.]

Severability -- 1981 c 324: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to

other persons or circumstances is not affected." [1981 c 324 § 18.]

RCW 34.05.040 Operation of chapter if in conflict with federal law.

If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned.

[1988 c 288 § 104; 1959 c 234 § 19. Formerly RCW 34.04.930.]

RCW 34.05.080 Variation from time limits.

(1) An agency may modify time limits established in this chapter only as set forth in this section. An agency may not modify time limits relating to rule-making procedures or the time limits for filing a petition for judicial review specified in RCW 34.05.542.

(2) The time limits set forth in this chapter may be modified by rule of the agency or by rule of the chief administrative law judge if:

(a) The agency has an agency head composed of a body of individuals serving part time who do not regularly meet on a schedule that would allow compliance with the time limits of this chapter in the normal course of agency affairs;

(b) The agency does not have a permanent staff to comply with the time limits set forth in this chapter without substantial loss of efficiency and economy; and

(c) The rights of persons dealing with the agency are not substantially impaired.

(3) The time limits set forth in this chapter may be modified by rule if the agency determines that the change is necessary to the performance of its statutory duties. Agency

rule may provide for emergency variation when required in a specific case.

(4) Time limits may be changed pursuant to RCW 34.05.040.

(5) Time limits may be waived pursuant to RCW 34.05.050.

(6) Any modification in the time limits set forth in this chapter shall be to new time limits that are reasonable under the specific circumstances.

(7) In an adjudicative proceeding, any agency whose time limits vary from those set forth in this chapter shall provide reasonable and adequate notice of the pertinent time limits to persons affected. The notice may be given by the presiding or reviewing officer involved in the proceeding.

(8) Two years after July 1, 1989, the chief administrative law judge shall cause a survey to be made of variations by agencies from the time limits set forth in this chapter, and shall submit a written report of the results of the survey to the office of the governor.

[1989 c 175 § 3; 1988 c 288 § 108.]

NOTES: Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.482 Brief adjudicative proceedings -- Applicability.

(1) An agency may use brief adjudicative proceedings if:

(a) The use of those proceedings in the circumstances does not violate any provision of law;

(b) The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;

(c) The matter is entirely within one or more categories for which the agency by rule has adopted this section and RCW 34.05.485 through 34.05.494; and

(d) The issue and interests involved in the controversy do not warrant use of the procedures of RCW 34.05.413 through 34.05.479.

(2) Brief adjudicative proceedings are not authorized for public assistance and food stamp or benefit programs provided for in Title 74 RCW, including but not limited to public assistance as defined in RCW 74.04.005(1).
[1998 c 79 § 3; 1988 c 288 § 425.]

RCW 34.05.485 Brief adjudicative proceedings -- Procedure.
(1) If not specifically prohibited by law, the following persons may be designated as the presiding officer of a brief adjudicative proceeding:

(a) The agency head;

(b) One or more members of the agency head;

(c) One or more administrative law judges; or

(d) One or more other persons designated by the agency head.

(2) Before taking action, the presiding officer shall give each party an opportunity to be informed of the agency's view of the matter and to explain the party's view of the matter.

(3) At the time any unfavorable action is taken the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The brief written statement is an initial order. If no review is taken of the initial order as authorized by RCW 34.05.488 and 34.05.491, the initial order shall be the final order.
[1989 c 175 § 23; 1988 c 288 § 426.]
NOTES: Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.488 Brief proceedings -- Administrative review -- Applicability.

Unless prohibited by any provision of law, an agency, on its own motion, may conduct administrative review of an order resulting from brief adjudicative proceedings. An agency shall conduct this review upon the written or oral request of a party if the agency receives the request within twenty-one days after service of the written statement required by RCW 34.05.485(3).
[1989 c 175 § 24; 1988 c 288 § 427.]
NOTES: Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.491 Brief proceedings -- Administrative review -- Procedures.
Unless otherwise provided by statute:

(1) If the parties have not requested review, the agency may review an order resulting from a brief adjudicative proceeding on its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(2) The reviewing officer may be any person who could have presided at the brief proceeding, but the reviewing officer must be one who is authorized to grant appropriate relief upon review.

(3) The reviewing officer shall give each party an opportunity to explain the party's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing.

(4) The order on review must be in writing, must include a brief statement of the reasons for the decision, and must be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(5) A request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted.
[1988 c 288 § 428.]

RCW 34.05.494 Agency record in brief proceedings.
(1) The agency record consists of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. The agency shall maintain these documents as its official record.

(2) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in brief adjudicative proceedings or for the judicial review of brief adjudicative proceedings.
[1988 c 288 § 429.]

RCW 34.05.510 Relationship between this chapter and other judicial review authority.
This chapter establishes the exclusive means of judicial review of agency action, except:

(1) The provisions of this chapter for judicial review do not apply to litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.

(2) Ancillary procedural matters before the reviewing court, including intervention, class actions, consolidation, joinder, severance, transfer, protective orders, and other relief from disclosure of privileged or confidential material, are governed, to the extent not inconsistent with this chapter, by court rule.

(3) To the extent that de novo review or jury trial review of agency action is expressly authorized by provision of law.
[1988 c 288 § 501.]

RCW 34.05.534 Exhaustion of administrative remedies.

A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review, except:

(1) A petitioner for judicial review of a rule need not have participated in the rule-making proceeding upon which that rule is based, have petitioned for its amendment or repeal, have petitioned the joint administrative rules review committee for its review, or have appealed a petition for amendment or repeal to the governor;

(2) A petitioner for judicial review need not exhaust administrative remedies to the extent that this chapter or any other statute states that exhaustion is not required; or

(3) The court may relieve a petitioner of the requirement to exhaust any or all administrative remedies upon a showing that:

(a) The remedies would be patently inadequate;

(b) The exhaustion of remedies would be futile; or

(c) The grave irreparable harm that would result from having to exhaust administrative remedies would clearly outweigh the public policy requiring exhaustion of administrative remedies.

[1997 c 409 § 302; 1995 c 403 § 803; 1988 c 288 § 507.]

NOTES: Part headings -- Severability -- 1997 c 409: See notes following RCW 43.22.051.

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

RCW 34.05.542 Time for filing petition for review.

Subject to other requirements of this chapter or of another statute:

(1) A petition for judicial review of a rule may be filed at any time, except as limited by RCW 34.05.375.

(2) A petition for judicial review of an order shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order.

(3) A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court and served on the agency, the office of the attorney general, and all other parties of record within thirty days after the agency action, but the time is extended during any period that the petitioner did not know and was under no duty to discover or could not reasonably have discovered that the agency had taken the action or that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.

(4) Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be deemed complete upon deposit in the United States mail, as evidenced by the postmark.

(5) Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition.

(6) For purposes of this section, service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record.

[1998 c 186 § 1; 1988 c 288 § 509.]

RCW 34.05.558 Judicial review of facts confined to record.

Judicial review of disputed issues of fact shall be conducted by the court without a jury and must be confined to the agency record for judicial review as defined by this chapter, supplemented by additional evidence taken pursuant to this chapter.

[1988 c 288 § 513.]

RCW 34.05.570 Judicial review.

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

[2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

NOTES: Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.590 Incorporation of other judicial review provisions.

Proceedings for civil enforcement are governed by the following provisions of this chapter on judicial review, as modified where necessary to adapt them to those proceedings:

(1) RCW 34.05.510(2) (ancillary procedural matters); and

(2) RCW 34.05.566 (agency record for judicial review).

[1988 c 288 § 521.]

Chapter 504-04 WAC

PRACTICE AND PROCEDURE

Last Update: 11/22/89

PART I GENERAL PROCEDURAL RULES

WAC 504-04-010 Matters subject to brief adjudication. The following proceedings are matters to be treated as brief adjudications pursuant to RCW 34.05.482 through 34.05.491:
(1) Student conduct proceedings. The procedural rules of chapter 504-25 WAC apply to these proceedings.
(2) Appeals of residency determinations. If a hearing is required by law or constitutional right, appeals of residency determinations under RCW 28B.15.013 are brief adjudicative proceedings conducted by the office of admissions.
(3) Appeals of parking violations. Appeals of parking violations are brief adjudicatory proceedings conducted pursuant to applicable rules. See WAC 504-17-240 and 504-18-170.
(4) Hearings on student records. Hearings pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC.
(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the office of scholarships and financial aid.
(6) Emergency withdrawal of students. Proceedings to disenroll students for medical or psychological reasons are brief adjudicative proceedings conducted by the office of student affairs.
(7) Discipline and termination of student employees. When required by law, hearings for the termination of or imposition of disciplinary measures on student employees shall be brief adjudicative proceedings.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-010, filed 11/22/89, effective 12/23/89.]

WAC 504-04-020 Appointment of presiding officers for all adjudicative proceedings. The president of Washington State University or his or her designee shall have the power to appoint committees or members of the faculty, staff and student body to be presiding officers for formal and brief adjudicative proceedings. The term "presiding officer" as used in this chapter shall be read in the plural when the context demands.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-020, filed 11/22/89, effective 12/23/89.]

PART II PROCEDURAL RULES FOR FORMAL PROCEEDINGS

WAC 504-04-110 Adoption of model rules of procedure for formal proceedings -- Exception. In formal proceedings pursuant to RCW 34.05.413 through 34.05.476 Washington State University adopts the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC, with the following exception:

WAC 10-08-190 Adjudicative proceedings, cameras-recording devices.
See WAC 504-04-120 which determines the use of cameras and recording devices at adjudicative proceedings. Other procedural rules adopted in this title and this chapter are supplementary to the model rules. In the case of a conflict between the model rules and procedural rules adopted by Washington State University, the procedural rules adopted by the university shall govern.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-110, filed 11/22/89, effective 12/23/89.]

WAC 504-04-120 Confidentiality of student, faculty and staff formal adjudicative proceedings. In formal

adjudicative proceedings, the presiding officer shall have the power to close all or part of the hearing to public observation. The presiding officer shall have the power to impose reasonable conditions upon observation of the proceeding. The presiding officer also shall have the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or medical withdrawal, hearings will normally be closed to public observation.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-120, filed 11/22/89, effective 12/23/89.]

WAC 504-04-130 Advising and representation of parties. Any person whose rights are in issue in a formal adjudicative proceeding shall have the right to have an adviser present during any stage of the proceedings. However, only persons admitted to the practice of law in the state of Washington shall be permitted to act as a representative at the proceedings. The presiding officer shall have the power to impose reasonable conditions upon participation of advisors and representatives.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-130, filed 11/22/89, effective 12/23/89.]

WAC 504-04-140 Discovery. Discovery in formal hearings may be permitted at the discretion of the presiding officer. In permitting discovery, reference shall be made to the civil rules applicable in court proceedings for guidance. The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.
[Statutory Authority: RCW 34.05.220, 28B.30.095, 28B.30.125, 28B.10.648, 34.05.250 and 34.05.482. 89-23-117, § 504-04-140, filed 11/22/89, effective 12/23/89.]

Chapter 504-21 WAC

UNIVERSITY POLICY ON STUDENT EDUCATION RECORDS

Last Update: 9/13/01

WAC 504-21-010 University policy on student education records. Public Law 93-380, the Family Educational Rights and Privacy Act of 1974, requires that the university adopt guidelines concerning the right of a student to inspect his or her education records, and guidelines concerning the release of personally-identifiable information to third parties. The act further provides that such a student has the right to a hearing in order to provide for the correction or deletion of inaccurate, misleading or otherwise inappropriate data. The act also provides that students be informed of the types of education records maintained by the university that are directly related to students.

Consistent with that act, this policy on student education records is established to insure that information contained in such records is treated in a responsible manner with due regard to the personal nature of the information. [Order 77-1, § 504-21-010, filed 5/2/77.]

WAC 504-21-020 Definition of a student. A student is defined as any person who is or has been officially enrolled at Washington State University and with respect to whom the university maintains education records or personally-identifiable information. [Order 77-1, § 504-21-020, filed 5/2/77.]

WAC 504-21-030 Education records -- Student's right to inspect.

(1) A student has the right to inspect and review his or her education records. A list of the types of education records maintained by the university and the record locations may be

obtained by the student at the office of student affairs or at the registrar's office.

(a) For purposes of this chapter the term "education records" means those records, files, documents and other materials which contain information directly related to a student.
(b) The term "education records" does not include:

(i) Records of instructional, supervisory and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute or the maker's administrator.
(ii) Records of the university police department which are maintained by the law enforcement unit of WSU that were created by the WSU law enforcement unit for the purposes of law enforcement.
(iii) Records made and maintained in the normal course of business which relate exclusively to the person's capacity as an employee and are not available for any other purposes. Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under this paragraph.
(iv) Records on a student which are created or maintained by a physician, psychiatrist, psychologist or other recognized professional or para-professional, acting in a professional or para-professional capacity, or assisting in that capacity and which are created, maintained or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment. Such records can be personally reviewed by a physician or other appropriate professional of the student's choice. In addition, health care information may be disclosed if authorized by state law.

(v) Records that contain information about an individual after he or she is no longer a student at that agency or institution.

(2) Recommendations, evaluations or comments concerning a student that are provided in confidence, either expressed or implied, as between the author and the recipient, shall be made available to the student, except as provided in this subsection.

(a) The student may specifically release his or her right to review where the information consists only of confidential letters and recommendations respecting:

(i) Admission to any educational institution, or

(ii) Employment application information and documents filed and maintained at the student's request at the university office of career services and placement.

(iii) Receipt of an honor or honorary recognition.

(iv) Faculty evaluations and other education records placed in departmental files where the department serves in a placement or referral capacity.

(b) A student's waiver of his or her right of access to confidential statements is valid only if:

(i) The student, upon request, shall be notified of the names of all persons making confidential statements concerning him; and

(ii) Confidential statements shall be used solely for the purpose for which they were originally intended; and

(iii) Such waivers are not required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from the university.

(iv) The waiver is made in writing and signed by the student, regardless of age.

(c) Recommendations, evaluations or comments concerning a student that have been provided in confidence, either expressed or implied, as between the author and the recipient, prior to January 1, 1975, shall not be subject to release to the student. Such records shall remain confidential and shall be released only with the consent of the author of the specific document. Such records shall be used by the institution only for the purpose for which they were originally intended.

(3) Where requested records or data include information on more than one student, the student shall be entitled to receive or be informed of only that part of the record or data that pertains to the requesting student.

(4) Students have the right to obtain copies of their education records. Charges for the copies shall not exceed the cost normally charged by a Washington State University copy center (except in cases where charges have previously been approved for certain specified services, such as transcripts and grade sheets).

(5) The registrar is the official custodian of academic records and therefore is the only official who may issue a transcript of the student's official academic record.

(6) Student education records may be destroyed in accordance with a department's routine retention schedule where the departmental procedure has been approved by the university records officer. In no case will any record which is requested by a student for review in accordance with these regulations be removed or destroyed prior to final disposition of the record request.
[Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-030, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-030, filed 5/2/77.]

WAC 504-21-040 Requests and appeal procedures.

(1) A request by a student for review of information shall be made in writing to the university employee or office having custody of the particular record.
(2) The person or office receiving a proper request for review of information must respond to a request for education records within a reasonable period of time, but in no case more than 45 days after the request has been made. A university employee or office which is unable to comply with a student's request within the above-stated time period shall inform the student of that fact and the reasons therefor in writing.
(3)(a) A student who believes his or her request has not been properly answered by a particular person or office should consult the appropriate dean or director having supervisory responsibility for the office.

(b) If a student remains dissatisfied after consulting with the appropriate dean or director, the student may then request a hearing before the university's student records committee. Following the hearing, the university's student records committee shall render its decision within a reasonable period of time. The decision of the university's student records committee shall be final, *except as provided in WAC 504-21-080.*

(c) In no case shall any request for review by a student be considered by the university's student records officer which has not been filed with that officer in writing within 90 days from the date of the initial request to the custodian of the record.

(d) The student records committee shall not review any matter regarding the appropriateness of official academic grades. (University Academic Regulation 104, "academic complaint procedure" should be followed in all cases involving grading disputes.)

(e) Eligible students are hereby notified of their right to file a complaint with the Department of Education

concerning any alleged failure of Washington State University to comply with the Family Educational Rights and Privacy Act of 1974, as amended. [Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-040, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-040, filed 5/2/77.]

WAC 504-21-050 Release of personally-identifiable records.

(1) The university shall not permit access to or the release of education records or personally-identifiable information contained therein, other than "directory information," (as defined in paragraph 5 of this section), without the written consent of the student to any party other than the following:

(a) University staff and faculty, including deans, department and program chairs and academic advisers, and faculty and students when officially appointed to a university senate or administrative committee, when the information is required for a legitimate educational interest within the performance of their responsibilities to the university, with the understanding that its use will be strictly limited to the performance of those responsibilities.

(b) Federal and state officials requiring access to education records in connection with the audit and evaluation of a federally- or state-supported education program or in connection with the enforcement of federal or state legal requirements which relate to such programs. In such cases the information required shall be protected by the federal or state official in a manner which will not permit the personal identification of students and their parents to other than those officials, and such personally-identifiable data shall be destroyed when no longer needed for

such audit, evaluation or enforcement of legal requirements.

(c) Persons or organizations, other than parents or legal guardians, providing to the student financial aid, or determining financial aid decisions concerning eligibility, amount, condition, and enforcement of terms of said aid.

(d) Organizations conducting studies for or on behalf of the university for purposes of developing, validating or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students by persons other than representatives of such organizations, and such information will be destroyed when no longer needed for the purposes for which it was provided.

(e) Education records may be used for legitimate academic research; provided that

(i) The procedures utilized and the reported findings do not violate the student's confidence;

(ii) Students' names will not be included in the study or in any way linked with the data;

(iii) Case histories and case records are sufficiently disguised to prevent identification of the individuals involved; and

(iv) The student's written permission is obtained where individual identification occurs.

(f) Accrediting organizations in order to carry out their accrediting functions.

(g) Any person or entity designated by judicial order or lawfully-issued subpoena, upon condition that a reasonable attempt has been made to notify the student of all such orders or subpoenas in advance of

the compliance therewith unless the subpoena is issued for a law enforcement purpose or is issued by a federal grand jury and the court or other issuing agency has ordered that the existence of the subpoena not be disclosed. Any university employee or office receiving a subpoena or judicial order for education records should immediately notify the WSU division of the office of the attorney general.
(h) Parents or legal guardians of a student who have established that student's status as their dependent according to Internal Revenue Code.

(i) An alleged victim of any crime of violence or nonforcible sexual offense, as they are defined in Appendix A to 34 CFR Part 99, shall be informed of the results of any disciplinary proceeding conducted by WSU against the alleged perpetrator of that crime with respect to that crime.

(j) To the office of the attorney general when disclosure is to comply with a judicial order or to provide legal advice.

(k) WSU may provide to parents or guardians of students under age twenty one information regarding violations of federal, state, or local laws or the university's conduct code where such violations concern the use or possession of alcohol or controlled substances and where WSU determines that those students have committed such violations.

(l) When either the student initiates legal action against WSU or when WSU initiates legal action against the student, WSU may disclose to the court any educational records of the student that are relevant to the legal action.

(m) Information may be disclosed in conformance with other exceptions to the prior written consent requirement of the Family Educational Rights and Privacy Act and implementing regulations found at 34

C.F.R. § 99. A copy of these regulations may be obtained from the Office of the Registrar.

(2) Where the consent of a student is obtained for the release of education records, it shall be in writing, signed and dated by the person giving such consent, and shall include:

(a) A specification of the records to be released,

(b) The reasons for such release, and

(c) The names of the parties to whom such records will be released unless the nature of the activity is such that advance identification of recipients is not possible such as employment assistance provided by the university office of career services and placement, in which case an effort will be made to identify recipients of information as they become known.

(3) In cases where records are made available without student consent as permitted by WAC 504-21-050 (1)(b), (c), (d), (e), (f), (i) and (j) the university shall maintain a record which will indicate the parties which have requested or obtained access to a student's records maintained by the university and which will indicate the legitimate interest of the requesting party. Releases in accordance with WAC 504-21-050 (1)(a) need not be recorded.

(4) Personally-identifiable education records released to third parties, with or without student consent, shall be accompanied by a printed statement indicating that the information cannot be subsequently released in a personally-identifiable form to any other parties without obtaining consent of the student unless such disclosures are made pursuant to WAC 504-21-050 (1)(g), (h), (j), (k), or (l) or the information released is directory information as defined in paragraph 5 of this section.

(5) The term "directory information" used in WAC 504-21-050(1) is defined as student's name (including any former name), local and permanent addresses and telephone numbers, electronic mail address(es), major and minor fields

of study, participation in officially-recognized activities in sports, weight and height of members of athletic teams, dates of attendance, enrollment status (e.g., undergraduate of graduate; full time or part-time), grade level, degrees, certificates, and awards received including the president's honor roll, and the most recent previous educational institution attended by the student. Students may request that the university not release directory information by filing a request with the registrar's office or the office of payroll services.

(6) Information from education records may be released to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other person(s). [Statutory Authority: RCW 28B.30.150. 01-19-027, § 504-21-050, filed 9/13/01, effective 10/14/01. Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-050, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-050, filed 5/2/77.]

WAC 504-21-060 University records. All university employees or offices who have custody of education records will develop procedures in accord with WAC 504-21-010 through504-21-060 . Any supplementary regulations found necessary by departments will be filed with the student records committee, which will be responsible for periodic review of policy and procedures. No records shall be kept that reflect a student's political or ideological beliefs or associations. [Statutory Authority: RCW 28B.30.095, 28B.30.125 and 28B.30.150. 89-11-065 (Order 89-1, Resolution No. 3-31-89-16), § 504-21-060, filed 5/18/89, effective 7/1/89; Order 77-1, § 504-21-060, filed 5/2/77.]

WAC 504-21-070 Student records officer. The president's designee shall be responsible for reviewing unusual requests for information and for assisting in the interpretation of these

rules. The designee shall also be responsible for hearing appeals as defined in WAC 504-21-040. [Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-070, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-070, filed 5/2/77.]

WAC 504-21-080 Right of student to register objections. Any student who objects to the accuracy or truthfulness of any information contained in any university education record that is related to him or her may, after processing an unsuccessful appeal pursuant to WAC 504-21-040, submit a written view regarding his or her education records to the provost, who shall *review the appeal and take necessary action which may include reconsideration by the student records officer or inclusion* of the written objection or summary thereof in such education records; provided, however, no student has any right to post objections to academic grades and have the same appear on the student's academic record. [Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-080, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-080, filed 5/2/77.]

WAC 504-21-090 Notice of rights given under Family Educational Rights and Privacy Act of 1974. In accordance with the requirements of the Family Education Rights and Privacy Act of 1974, the university will make its best efforts to notify all students of the rights under this act. Such notification shall be done through the Washington Administrative Code procedure, notices to the campus newspaper and radio and television services, and such other publications and media that the university deems appropriate. [Statutory Authority: RCW 28B.30.150 and 20 U.S.C. 1232g. 95-07-043, § 504-21-090, filed 3/8/95, effective 4/8/95; Order 77-1, § 504-21-090, filed 5/2/77.]

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

U.S.C. TITLE 20, CHAPTER 31

SUBCHAPTER III—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

§ 1232g. Family educational and privacy rights (Release date: 2004-08-06)

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this

section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.

(C) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (D), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(D) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if

(i) the student is, upon request, notified of the names of all persons making confidential recommendations and

(ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt

of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) records maintained by a law enforcement unit of the educational agency or institution that were created

by that law enforcement unit for the purpose of law enforcement;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information

designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) (i) authorized representatives of

(I) the Comptroller General of the United States,

(II) the Secretary, or

(III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized

representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

(ii) after November 19, 1974, if—

(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student.[1]

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of title 26;

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and

(J) (i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.

Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of

(A) the Comptroller General of the United States,

(B) the Secretary, or

(C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6) (A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, the final results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.

(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of title 18), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

(i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

(ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student.

(7) (A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071 of title 42 concerning registered sex offenders who are required to register under such section.

(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution effectively informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary shall take appropriate actions to enforce this section and to deal with violations of this section, in accordance with this chapter, except that action to terminate

assistance may be taken only if the Secretary finds there has been a failure to comply with this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department for the purpose of investigating, processing, reviewing, and adjudicating violations of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

.....

§ 1231c. Advice, counsel, and technical assistance (Release date: 2004-08-06)

(a) State educational agencies, institutions of higher education

For the purpose of carrying out more effectively Federal education programs, the Secretary is authorized, upon request, to provide advice, counsel, and technical assistance to State educational agencies, institutions of higher education, and, with the approval of the appropriate State educational agency, elementary and secondary schools—

(1) in determining benefits available to them under Federal law;

(2) in preparing applications for, and meeting requirements of, applicable programs;

(3) in order to enhance the quality, increase the depth, or broaden the scope of activities under applicable programs; and

(4) in order to encourage simplification of applications, reports, evaluations, and other administrative procedures.

(b) Cost allocation, collection, etc., by local educational agencies

The Secretary shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines

(1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended,

(2) that the agency will use such procedures as will insure adequate evaluation of each of the programs involved, and

(3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

(c) Dissemination

In awarding contracts and grants for the development of curricula or instructional materials, the Secretary and the Director of the National Institute of Education shall—

(1) encourage applicants to assure that such curricula or instructional materials will be developed in a manner conducive to dissemination through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in such dissemination;

(2) permit applicants to include provision for reasonable consultation fees or planning costs; and

(3) insure that grants to public agencies and nonprofit private organizations and contracts with public agencies and private organizations for publication and dissemination of curricula or instructional materials, or both, are awarded competitively to such agencies and organizations which provide assurances that the

curricula and instructional materials will reach the target populations for which they were developed.

(d) Annual report by Secretary

The Secretary's annual report shall contain a statement of the Secretary's activities under this section.

§ 1221e–3. General authority of Secretary (Release date: 2004-08-06)

The Secretary, in order_to carry out functions otherwise vested in the Secretary by law or by delegation of authority pursuant to law, and subject to limitations as may be otherwise imposed by law, is authorized to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by, the Department.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OFWASHINGTON

BENJAPON SAKKARAPOPE,
Plaintiff,
vs. NO. CV-04-00074-JLQ
THE BOARD OF REGENTS,
WASHINGTON STATE
UNIVERSITY,
and
THE SECRETARY,
THE UNITED STATES DEPARTMENT OF EDUCATION,
Defendants.

COMPLAINT

Plaintiff alleges:

JURISDICTION AND VENUE

1. The District Court has jurisdiction under 42 U.S.C. §1983
2. This District Court has venue because the principal Defendant's main office is resided in Whitman County, Washington. The subject matter in this case arises occurred in Whitman County, Washington.

STATUS OF PLAINTIFF

3. Plaintiff is a national of Thailand.
4. Plaintiff had attended a graduate program at Washington State University (WSU) since Spring 1993 and is an eligible student by the FERPA definition.
5. Plaintiff has a property interest at WSU:
(A) Plaintiff's initial admission to a doctoral program in Marketing at WSU was arranged by the Department of Marketing as to initiate an institutional academic cooperation

between WSU and Prince of Songkla University, Thailand; and

(B) Plaintiff has full interest and intention to fulfill his advanced education at WSU.

6. An educational contract between WSU and Plaintiff was entered:

(A) The United States granted an F-1 VISA to attend a college at WSU on the basis of WSU's admissions to its academic programs;

(B) Plaintiff's initial admission to a graduate program at WSU was not made through a regular admission procedure and standard requirements.

7. WSU dismissed Plaintiff from the Individual Interdisciplinary Doctoral Program (IIDP) with a joint master program in Statistics in April 2000 and January 2003, respectively. The dismissals have been pending action for judicial review of administrative decisions under the Administrative Procedure Act, RCW 34.05, in the Superior Court of Whitman County, Case No. 03-2-00168-4.

STATUS OF DEFENDANTS

8. Defendant the Board of Regents, Washington State University, is a governing body of Washington State University and has obligation to impartially perform its duties under oath. RCW 28B.30; RCW 28B.30.115; RCW 28B.10.520. Washington State University is a state higher education institution receiving federal funds.

9. Defendant the Secretary of the U.S. Department of Education has duties to administer FERPA. The Family Policy Compliance Office (FPCO) is the Secretary's designee to (i) investigate, process, and review complaints and violations under the Act, and (ii) provide technical assistance to ensure compliance with the Act. 34 C.F.R. §99.60.

FACTS

10. Plaintiff had made requests for his educational records under FERPA for inspecting, reviewing and copying: (i) the records of the IIDP preliminary examination, and the adjudication of rights and responsibilities of Graduate

Student Code, and (ii) the records of Dr. Howard Grimes' decisions and actions, and of the examination of the Department of Agricultural Economics, from April 2000 to January 2003.

11. Plaintiff has exhausted all administrative proceedings to exercise his FERPA rights prior to this complaint is filed.

12. On December 5, 2001, Plaintiff requested for a hearing pursuant to FERPA before the University to fully release of his educational records of the IIDP preliminary examination and the adjudication of rights and responsibilities of Graduate Student Code:

(A) WSU adopted a brief adjudicative proceeding pursuant to RCW 34.05.485 et seq. to hear FERPA issues as described in WAC 504-04-010(4): "Hearings pursuant to the Family Educational Rights and Privacy Act, 20USC §1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC."

(B) The hearing was conducted by the University's Student Records Committee (SRC), chaired by Richard Backes:

(i) The hearing was held on March 27, 2002 with one party presence at the hearing; and

(ii) The decision was made on April 5, 2002 that "[w]ith the inclusions in this letter, the University has fully complied with your request for the release of education records under FERPA."

(C) According to the University's Committee Manual, the functions in regard to FERPA are designed to a standing committee, "Registration and Records Committee." The SRC did not have authority to conduct a hearing in regard to FERPA.

(D) After unsuccessfully subsequent follow-ups to obtain the records and clarification of the April 5, 2002, decision, an appeal before the Provost dated September 23, 2002, to review the decision of April 5, 2002, pursuant to RCW 34.05.488, was filed.

(E) Without following the review procedure as prescribed in RCW 34.05.491, the Provost rendered his decision dated

November 6, 2002, concurring with the decision of April 5, 2002. No clarification and explanation was provided.

13. The University imposes a rule that: (i) in the March 14, 2002 letter, "[a]n advisor of your choice may accompany you to this hearing, but that person is not allowed to address the committee directly," and (ii) in the March 20, 2002, letter, "[t]he advisor is allowed to give you advice during the hearing, but is not permitted to directly address the committee or advocate on your behalf." Plaintiff believes this rule violates his right in the hearing proceeding and made objections as indicated in his letter dated March 11, 2002 and at the hearing of March 27, 2002. The objections were not properly denied pursuant to RCW 34.05.

14. In his letter dated March 18, 20002, Plaintiff made objections to disqualify any member of the SRC who had conflict of interest in the outcome of the hearing. Mr. Richard Backes, Chair of SRC, had conflict of interest, but did not exclude himself from conducting the hearing.

15. On September 27, 2002, a complaint was first filed directly with the Secretary of U.S. Department of Education. With a follow-up of November 18, 2002, Director Rooker provided a response dated November 27, 2002, asking for a revision of the original complaint on a given form and instruction, and in separate allegations.

16. Plaintiff revised the complaint by following the given instruction and filed nine separate complaints with the FPCO:

(A) On January 4, 2003, three complaints were filed:

(i) A complaint that the Plaintiff has been denied access to education records of the IIDP preliminary examination ended on February 11, 2000, and of the adjudicative proceedings under the Graduate Student Code, in violation of 34 CFR 99.10.

(ii) A complaint that Washington State University has destroyed the requested education records in violation of 34 CFR 99.10(e).

(iii) A complaint that Washington State University has denied responding to reasonable requests for explanations

and interpretations of the records of the IIDP preliminary examination ended on February 11, 2000, and of the adjudicative proceedings under the Graduate Student Code in violation of 34 CFR 99.10(c).

(B) On January 17, 2003, three complaints were filed:

(i) A complaint that the Plaintiff has been denied access to education records of the examination of the Department of Agricultural and Resource Economics. 34 CFR 99.10.

(ii) A complaint that the Plaintiff has been denied access to education records of the Committee on Graduate Student Rights and Responsibilities (CGSRR). 34 CFR 99.10.

(iii) A complaint that Washington State University has denied responding to reasonable requests for explanations and interpretations of the records of the CGSRR, Washington State University. 34 CFR 99.10(c).

(C) On March 15, 2003, one complaint was filed: A complaint that Washington State University has denied responding to reasonable requests for explanation and interpretation of the records of Dr. Grimes' memorandums of November 25 and December 18, 2002, and January 31, 2003. 34 CFR 99.10(c).

(D) On April 21, 2003, two additional complaints were filed:

(i) A complaint that Washington State University by the University's Student Records Committee (SRC), had conducted a hearing under FERPA in violation of 34 CFR 99.22.

(ii) A complaint that Washington State University has denied responding to reasonable requests for explanations and interpretations of the records of the University's Student Records Committee in violation of 34 CFR 99.10(c).

17. Actions by the FPCO responsive to the complaints:

(A) With a follow-up request of March 11, 2003, the FPCO by Bernard Cieplak, returned the above first seven complaints and asked for another revision on April 15, 2003.

(B) On April 21, 2003, Plaintiff resubmitted the same seven complaints to Director LeRoy Rooker, FPCO, because Plaintiff believed the complaints were reasonable and explicit

at the best he could do. Two additional complaints were filed.

(C) With a follow-up request of June 2, 2003, Director LeRoy Rooker, provided a response dated June 18, 2003, asking for more information. On June 23, 2003, Plaintiff provided the lists of more precisely requested records responsive to the FPCO's request.

(D) With follow-up requests dated September 18 and November 17, 2003. The FPCO did not timely provide a response.

18. On December 5, 2003, Plaintiff filed a Petition for an Adjudication before the Secretary of the U.S. Department of Education to enforce FERPA compliance under federal Administrative Procedure Act:

(A) On the same day that the Office of the General Counsel received the Petition (December 8, 2003), the FPCO issued a response to the follow-up letters of September 18 and November 17, 2003 requesting another revision of the complaints.

(B) Plaintiff notified the FPCO that the disputed matter was already moved beyond the FPCO since the Petition was filed. The FPCO was afforded more than reasonable time to fulfill its duties.

(C) On December 17, 2003, General Attorney Edmond J. Trepacz, II denied the application on behalf of the Secretary.

(D) On January 7, 2004, Plaintiff requested a reconsideration of the denial before the Secretary. The FPCO denied the request for a reconsideration on behalf of the Secretary and stated that "[t] herefore, we are closing this matter without a finding."

CAUSES OF ACTION

19. Washington State University (WSU) has deprived Plaintiff's rights under Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99:

(A) "Except as limited under §99.12, a parent or eligible student must be given opportunity to inspect and review the student's education records." 34 CFR 99.10(a)

(B) "The educational agency or institution,…., shall comply with a request for access to records within a reasonable period of time, but not more than 45 days after it has received the request." 34 CFR 99.10(b)
(C) "The educational agency or institution, …., shall respond to reasonable requests for explanations and interpretations of the records." 34 CFR 99.10(c)
(D) "The educational agency or institution,….., shall not destroy any education records if there is an outstanding request to inspect and review the records under this section." 34 CFR 99.10(d)
20. Washington State University by the University's Student Records Committee (SRC) has deprived Plaintiff's rights under FERPA by conducting a hearing of March 27, 2002 in violation of FERPA:
(A) "An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student." 34 CFR 99.21(a)
(B) "The hearing may be conducted by an individual,…. who does not have a direct interest in the outcome of the hearing." 34 CFR 99.22(c)
(C) "The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under §99.21. The parent or eligible student may, at their own expenses, be assisted or represented by one or more individuals of his or her own choice, including an attorney." 34 CFR 99.22(d)
(D) "The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision." 34 CFR 99.22(f)
21. The Family Policy Compliance Office (FPCO), the U.S. Department of Education, has deprived Plaintiff's rights to have the FPCO impartially perform its duties as described in 34 C.F.R 99.60(i) under Family Educational Rights and

Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99. The Secretary by the FPCO has duties under 34 CFR 99.60 et seq. to enforce FERPA, but refused to finding facts and making determination.

22. Washington State University by Dr. Howard Grimes, Dean of the Graduate School, took actions terminating Plaintiff from his master program in Statistics in retaliation of Plaintiff from exercising his rights and in violation of rights and protections guaranteed to Plaintiff under the civil laws, statutes and Constitutions of the State and the United States.

EVIDENCE

23. The following evidence, but not limit to, will be used in the proceedings:

(A) Records of Petition for An Adjudication and attachments, and complaints. The Petition was filed with the Secretary, U.S. Department of Education, on December 5, 2003;

(B) The certified records, pleadings and discoveries in the case title: *Benjapon Sakkarapope v. State of Washington, the Board of Regents, Washington State University*, in the Superior Court of Whitman County, case no. 03-2-00168-4;

(C) Records of communications among Mr. Sakkarapope, the U.S. Department of Education and Washington State University; and

(D) Discoveries, other related records and witnesses.

DAMAGES

24. Washington State University and the FPCO have deprived Plaintiff's rights under FERPA and resulted in damages and substantial stigma to Plaintiff throughout his life and professional career:

(A) Any withholding, removing, and/or discarding Plaintiff's educational records has deprived Plaintiff's rights to inspect and review the truthfulness and integrity of the records utilized as the bases of WSU's decisions and actions, and to seek proper relief in the administrative and judicial proceedings.

(B) The Petitioner has standing to file complaints with the FPCO. As the result of that the FPCO refrains itself to

perform its duties and responsibilities to enforce FERPA compliance, Plaintiff cannot obtain his education records to seek other relief from the dismissals of the doctoral and master programs at WSU. The failure to act by the FPCO has deprived Plaintiff's rights under FERPA guaranteed by the Constitutions.

(C) The depriving of Plaintiff's rights under FERPA results in incomplete agency records of the IIDP preliminary examination, the adjudication of rights and responsibilities, and the dismissals of both doctoral and master programs for the pending judicial review, and limits Plaintiff's ability and opportunity to have a full, fair judicial review of such dismissals. The depriving of rights under FERPA creates substantial stigma to Plaintiff's life and liberty, career opportunity as well as personal reputation.

25. Washington State University by Dr. Howard Grimes, Dean of the Graduate School, took actions terminating Plaintiff from his master program in Statistics without due process of law in violation of rights and protections guaranteed to Plaintiff under the civil laws, statutes and Constitutions of the State and the United States. The depriving of rights also creates substantial stigma to Plaintiff's life and liberty, career opportunity as well as personal reputation.

RELIEF REQUESTED

26. Based on the facts, Washington State University and the FPCO have deprived Plaintiff's rights under FERPA. The termination of Plaintiff from his master program in Statistics has deprived Plaintiff's rights protected and guaranteed to Plaintiff under the civil laws, statutes and Constitutions of the State and the United States. Plaintiff has a property interest to complete his advanced degree programs at WSU. Therefore, Plaintiff is entitled to relief pursuant to 42 U.S.C. §1983 as well as other applicable provisions of laws as deemed fair, proper by the Court.

WHEREFORE, Plaintiff prays for judgment granting relieves as follows:

(1) Award fees and expenses incurred by that Plaintiff in connection with both administrative and judicial proceedings;

(2) Award monetary compensation for opportunity lost and damages in property interest, personal career and reputation, life and liberty from the deprivation of rights under FERPA as authorized by applicable laws and regulations; and

(3) Plaintiff seeks recovery from Defendants in a sum amount not less than the amount as equivalent to Plaintiff's loss of opportunity in obtaining his IIDP doctorate and master degree in Statistics for his professional career.

DATED this 24th of February, 2004.

s/Benjapon Sakkarapope
Plaintiff

Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

BENJAPON SAKKARAPOPE,
Petitioner

V.

THE BOARD OF REGENTS OF
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AND
THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF EDUCATION,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Volume II

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No.

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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No. 04-35643

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Appellant,

V.

THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY, and

THE SECRETARY,
THE UNITED STATES DEPARTMENT OF EDUCATION,
Appellees.

APPEAL

United States District Court
Eastern District of Washington

BRIEF OF APPELLANT

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I. JURISDICTIONAL STATEMENTS

1. Date of the Complaint filed: February 24, 2004. The underlying statutory provisions: the Family Educational Rights and Privacy Act, 20 U.S.C §1232g; 34 C.F.R. 99.
2. The District Court has jurisdiction under Civil Rights Act 42 U.S.C. §1983 and 5 U.S.C. 554; 5 U.S.C. 555.
3. Date of entry of final judgment of district court: June 22, 2004.
4. Date of service of Motion for Sanction: May 25, 2004.
5. Date of entry of order deciding Motion for Sanction: June 28, 2004.
6. Date of notice of appeal filed: July 19, 2004.
7. The appeal is from a final order of the District Court on Motion for Summary Judgment that disposes of all parties claims. The Court of Appeals has jurisdiction to review a final order of the District Court. FRAP 3

II. STATEMENT OF THE ISSUES

Assignment of Error

1. The District Court erred in entering the order of May 26, 2004: Order Re: Summary Judgment Motion and Prohibition of Filing in violation of Plaintiff's right. (Excerpt 237-8, 242-3)
2. The District Court erred in entering the order of June 22, 2004: Memorandum Opinion and Order **Granting** Defendant's Motion for Summary Judgment and Directing Judgment of Dismissal. (Excerpt 264-72)
3. The District Court erred in entering the order of June 28, 2004 denying Plaintiff's Motion for Sanction. (Excerpt 262)

Issues Pertaining to Assignment of Error

1. Are the immunities of the Board of Regents ("BOR") or the Secretary of the U.S. Department of Education ("Secretary") not waived in regard to a specific function performed, FERPA compliance?

2. Are BOR and Secretary a "person" the meaning of §1983?

3. Does the State of Washington waive its immunity from a federal suit underlying federal law violation?

4. Has a person have a right to sue the BOR in a federal court under §1983 where the state courts do not have jurisdiction over a FERPA claim?

5. Did BOR and Secretary fail to comply with FERPA and violate Sakkarapope's FERPA's right and prescribed due process right?

6. Is the doctrine of res judicata and collateral estoppel applicable to Sakkarapope's federal Complaint?

7. Were the state trial court's memorandum decision and order of March 5, 2004 admissible as material evidence basis for the district court's decision?

8. Has the WSU counsel committed professional misconducts and substantially failed to comply with Fed. R. Civ. Proc. Rule 11?

9. Does FERPA create a student's right to inspect and review his education records considered a federal right under 20 U.S.C. §1232g(a) and due process for enforcement procedure prescribed in 34 C.F.R 99.60 et. seq. guaranteed by the Fourteen Amendment of the constitution of the United States?

10. Had the District Court abused of discretion?

11. Did the Motion for Summary Judgment meet the standard of review?

12. Did Howard Grimes' action responsive to Plaintiff's requests for his educational records deprive Plaintiff's rights under FERPA?

13. Did Howard Grimes' termination of Sakkarapope from his master program (January 31, 2003) constitute a retaliation from exercising FERPA rights?

III. STATEMENT OF THE CASES

1. The Complaint was filed with the district court on February 24, 2004 (Excerpt 1-17), and Motion for Supplemental Jurisdiction on March 4, 2004 to include the issue of whether the brief adjudicative proceedings complied

with the Administrative Procedure Act, RCW 34.05 ("APA"). (Excerpt 18-22) Defendant the Board of Regents ("BOR") filed a response to the motion (Excerpt 99-101), which was objected by Sakkarapope to that the statements in the answers were not substantially complied with Fed. R. Civ. P. Rule 11. (Excerpt 217-22)

2. Order of Recusal and for Reassignment by Judge Lonny R. Suko* was filed on March 1, 2004, and Order Reassigning case to Judge Justin L. Quackenbush was entered on March 15, 2004. (Ct. Rec†. 2 and 10)

3. The Defendants chose to file a separate answer to the Complaint. Deft. BOR filed its answer on March 18, 2004. (Excerpt 46-54) Defendant the Secretary of the U.S. Department of Education ("Secretary") filed its answer on April 21, 2004. (Excerpt 106-111) Sakkarapope filed Objections and Reply to that the statements in the answers were not substantially complied with Fed. R. Civ. P. Rule 11 on March 31 and May 11, 2004, respectively. (Excerpt 55-66 and 124-7)

4. On April 5, 2004, before Secretary filed its answer to the Complaint, BOR moved the district court with a separate Motion for Summary Judgment based on the disputed facts from the state trial court. (Excerpt 67-98). The Whitman County Superior Court's Memorandum Decision and Order Granting WSU Motion for Summary Judgment were entered under Sakkarapope's objections to the accuracy and sufficiency of the facts and conclusion of law. (Excerpt 169-86) The matters have been pending for review by the state court of appeals since March 5, 2004. (Ct. Rec. 18, 19, Exh. C) A Motion to exclude the state trial court order of

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* Without identifying reasons of recusal, the fact is clear that Judge Suko and his wife are WSU's alumni and have maintained strong ties with the University. However, it is not yet clear whether Judge Justin L. Quackenbush's personal involvement with the University that could affect his judgment in the case.

† "Ct. Rec." refers to Clerk's Record of the District Court. "Exh." refers to "Exhibit"; "Att." refers to "Attachment."

March 5, 2004 and Objection to BOR's Motion for Summary Judgment was made before the district court. (Excerpt 114-23)

The Secretary did not move the district court either with a joint or its motion for summary judgment.

5. At its own initiative, the Order to Show Cause was entered by the district court on April 12, 2004. (Excerpt 102-5, 112-3) Plaintiff's Memorandum of Authorities and Statement of Facts were filed on May 18, 2004. (Excerpt 192-211) BOR and Secretary filed its responses of May 24 and 19, 2004, respectively. A teleconference was held on May 25, 2004. (Excerpt 273-86) Sakkarapope received the Secretary's response after the hearing and thus he did not have an opportunity to respond to the Secretary's arguments at the hearing*. The court entered an order of May 26, 2004, prohibiting of filing. (Excerpt 237-8)

On May 28, 2004, Sakkarapope asked the court to clarify its order of May 26, 2004 and his right to file his motion for summary judgment and additional material evidence of facts. The court denied his request. (Excerpt 239-43)

6. BOR filed its Reply to Plaintiff's Memorandum of Authorities' on June 4, 2004. (Excerpt 244-55) The Motion for Summary Judgment was decided without oral argument. On June 22, 2004, the District Court entered its final judgment on Motion for Summary Judgment that disposes of all claims, (Excerpt 264-72) despite of that the disputed issues of facts remained unsolved. The transcript of the

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* Sakkarapope did not receive Secretary's response of May 19, 2004 prior to the teleconference of May 25, 2004, but after the hearing in that late afternoon. Sakkarapope was not informed and did not have any knowledge during the hearing whether Secretary had filed such response where it did not move the court as a joint motion. However, the meter-postage was stamped on May 19, 2004. Normally, a mail will be delivered within the next day from Spokane to Pullman. It was not known why the Secretary's response was not mailed in the same day and the counsel did not secure the party should have received such document prior to the hearing.

hearing of May 25, 2004, shows the court and the counsels did not have sufficiently accurate and proper understanding of the material evidence of facts in the state court proceedings and what the state court decided. (*See* Excerpt 273-86)

7. On May 4, 2004, Sakkarapope served upon BOR a Motion for Sanction to challenge the truthfulness and accuracy of statements in BOR's Answer to the Complaint and pleadings pursuant to Fed. R. Civ. P. Rule 11(c), but he was not able to present before the court after 21 days of services because the court's order of prohibition of filing. The WSU counsel did not either withdraw or make appropriately correction. The Motion for Sanction was then filed on June 25, 2004 and denied by the order of June 28, 2004. (Excerpt 256-62)

IV. STATEMENT OF FACTS

1. Sakkarapope is a doctoral student in the Individual Interdisciplinary Doctoral Program ("IIDP") with a joint master program in Statistics at Washington State University ("WSU"). The University arbitrarily and falsely claimed that Sakkarapope had failed the preliminary examination twice and would be dropped from the doctoral program, but allowed him to continue his joint master degree program in Statistics. In fact, the January 2000 preliminary examination was the only preliminary examination Sakkarapope took in the entire academic career at WSU. In the exam process, there was a dispute in the result of the written exam portion and the chairperson refused to reconvene the committee to discuss and solve the discrepancies in the written exam, but forced the student to take the oral exam portion and then entered a failing result without affording a second attempt as prescribed in the Graduate School Policies and Procedures.

During the appeal process over four years, the University did not afford him a due process. After exhaustion of administrative remedies, Sakkarapope eventually filed a Petition for Judicial Review ("PFR") of the

agency decision pursuant to the Administrative Procedure Act ("APA") with the state superior court on July 23, 2003. Nothing in this Petition asks the state court to review whether the BOR and the Secretary comply with FERPA. (Excerpt 23-45).

2. During the year 2000-1, Sakkarapope originally made requests for his educational records along with the Adjudication of Rights and Responsibilities ("ARR"), Graduate Student Code, but the University did not fully release his educational records of the January 2000 preliminary examination and the agency records of the adjudication of rights and responsibilities for inspection and review. To date, *the University released the January 2000 written examination only on the portion Sakkarapope received a passing grade, but still withheld the portions that the University claimed Sakkarapope received failing grades. None of the agency records of the ARR has been released.* (Excerpt 43-5)

3. In response to Sakkarapope's FERPA requests, the University refused to release the records unless a public records request was submitted. After unsuccessful attempts to exercise his rights to inspect and review his education records, Sakkarapope requested for a hearing to release his education records on December 5, 2001. Instead of the "Registration and Records Committee" as designated in the Committee Manual, the Student Records Committee ("SRC") was formed to hear FERPA issues under WAC 504-21-040. (Ct. Rec. 30)

4. The SRC by Richard Backes imposed a rule that: (1) in his March 14, 2002, letter, "[a]n advisor of your choice may accompany you to this hearing, but that person is not allowed to address the committee directly," and (2) in his March 20, 2002, letter, "[t]he advisor is allowed to give you advice during the hearing, but is not permitted to directly address the committee or advocate on your behalf."

Despite of Sakkarapope's objection to the SRC's authority, a hearing was held on March 27, 2002 pursuant to

a brief adjudicative proceeding, RCW 34.05.485 et seq. and WAC 504-04-010(4). The SRC rendered its decision dated April 5, 2002, stating "the University has fully complied with your request for the release of education records under FERPA." An appeal of the SRC's decision of April 5, 2002, was filed on September 23, 2002 pursuant to RCW 34.05.488. The Provost rendered his decision dated November 6, 2002, concurring with the SRC's decision of April 5, 2002. (Ct. Rec. 30 Exh. B and D).

5. Sakkarapope directly made FERPA requests to Howard Grimes, the chair of the committee rendering an academic decision of September 19, 2000 in the appeal of the ARR. In stead of releasing the requested records and responding to such request, Grimes premeditatedly retaliated Sakkarapope by issuing a series of memoranda* leading to the termination of January 31, 2003 from his master degree program in violation of his due process right. No hearing was afforded.

Moreover, after Howard Grimes was appointed to the Dean of the Graduate School and while Sakkarapope was out of the country for his father-in-law funeral, Grimes, quietly, arbitrarily dropped Sakkarapope from the University system on 10/22/2002 without informing the student and consulting with his academic advisor and department chair. (Ct. Rec. 30 Exh. E). The agency note:

> (A) Dated 12/2/02, "Howard Grimes in exercise room. He may be willing to let Ben continue, but the letters (regarding appeal) have to stop."
>
> (B) Dated 12/6/02, "and earlier conversation: Hao Zhang (major professor) Believes that Ben is OK as far as degree, making 'normal progress.' Was surprised to hear that Grad School believes he is finished at WSU. Knows about Ben's attempt to appeal results of comprehensive exams...."

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* The memorandum of 10/22/2002 was three times without Sakkarapope's knowledge. The last version was issued on November 25, 2002 to the International Student Advisor.

(C) Dated 12/6/02, "Nancy Intermill, prog. Coordinator in Statistics says as far as they know Ben is OK to continue his program. Have not received anything from Grad School informing them otherwise.....,"
(D) Dated 4/11/03, "Zhang-.....reporting him if he could be persuaded to give up his appeal effort for Phd and be allowed to stay and finish M.S.? He can ask Ben next Thursday. I said I would check w/ Mary F." (Ct. Rec. 30 Exh. C).

After unsuccessful attempts through the University's President, an appeal before the Board of Regents was filed on January 13, 2003, and Provost Bates denied access to the Board on behalf of the Board. (Ct. Rec. 30 Exh. D).

6. Through a public record request, on July 3, 2002, the University released additional records previously determined by the SRC it did not exist, e.g. Duft's January 26, 2000 memorandum. The University partially released the records responsive to two subpoenas, but quashed the rest of the records including the January 2000 written examination that Sakkarapope received failing grades and the agency records of the ARR. Moreover, on June 7, 2002, Kenneth Duft notified Kirsten Pauli that "...all those old materials were disposed of." No further clarification was made. (Ct. Rec. 30).

7. On July 19, 2002, the University notified Sakkarapope to file a FERPA complaint through a procedure described in 34 C.F.R 99.60 et. seq. A FERPA violation complaint was initially filed with the Family Policy Compliance Office ("FPCO") on September 27, 2002, within 180 days. (Excerpt 160-8) The complaint was revised into nine separate complaints according to the FPCO's instruction of November 27, 2002. With follow-ups over a year, because the FPCO did not perform its FERPA duty as prescribed in 34 C.F.R 99.60 et. seq., on December 5, 2003, Sakkarapope then filed a Petition for Adjudication before the Secretary

pursuant to 5 USC 554, 555 and 34 CFR 99.60 et seq. to enforce the FERPA due process. The Petition was denied and the FPCO eventually rendered its final decision on behalf of the Secretary on January 20, 2004, indicating that "...we are closing this matter without a finding." Sakkarapope then filed the Complaint with the district court on February 24, 2004, accordingly. (Ct. Rec. 30)

8. In the state trial cou.., Sakkarapope filed a complaint of counsel misconduct on January 15, 2004 and asked the state superior court to determine whether WSU's pleadings were complied with CR 11. An Affidavit of Prejudice was filed on January 28, 2004. The state trial court judge simply ignored all.

Despite of Sakkarapope's objections to the misleading and false statements of facts and conclusion of law in WSU's pleadings and the court's Memorandum Decision (Excerpt 72-78, 169-86), the state trial court did not conduct a judicial review of facts confined to agency records (RCW 34.05.558), but entered the Order of March 5, 2004, prepared by the state lawyer, and stated that "any objection, dispute or disagreement with this order must be addressed to the appellate court, not this trial court." (Excerpt 88).

9. A motion for stay of proceeding to enforce the state trial court's judgment of March 5, 2004 was filed and has been pending for a decision by the state higher court*. Sakkarapope also made Objection, Answer and Countermotion to Strike Respondent's Pleadings and Counsel Misconduct. (Ct. Rec. 30 Exh. I-O, N).

V. SUMMARY OF ARGUMENTS

The BOR and the Secretary have neglected to present the well-established existing legal authorities which are less

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* At the time the district court entered the order of June 22, 2004, a motion for stay was pending for review by the state appellate court and was denied on August 20, 2004 with no opinion. A motion for discretionary review has been pending for review by the state Supreme Court since September 21, 2004.

supportive of their positions. The district court then adopted double standard of inquiry based on a general argument of immunity and meaning of a "person" within the meaning of §1983. The court ignored to review the fundamental issues of the cases and left out the immunity issue of the Secretary.

The legal citation of the *Thompson* was neglected. The *Thompson* is not applicable to Sakkarapope's Complaint. The state superior court does not have jurisdiction over FERPA compliance, but the Secretary and federal courts. Nothing in *Gonzaga* barred a suit in a federal court where the FERPA adjudication has failed to enforce the provisions as to due process guaranteed by the Fourteen Amendment. Additionally, Grimes' action of the termination was motivated by more than one cause including FERPA compliance and such overlapping of actions and cannot be fully exclusive from the federal claim.

The district court's ruling constitutes abuse of discretion because it was rested on a clearly erroneous finding of a material fact, not supported by the record of evidence, and rested on an inaccurate view of the law. The counsels have committed professional misconduct in the proceeding.

VI. ARGUMENTS

A. Standard of Review

A party seeking summary judgment must show that there is an absence of disputed issues of material facts and that he is entitled to judgment as a matter of law. Fed. R. Civ. Proc. 56(c). The moving party has the burden of showing that no reasonable trier of fact could find other than for the moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). "A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the parties' differing versions of the truth." *S.E.C. v. Seaboard Corp.* 677 F.2d. 1301, 1306 (9th Cir. 1982). The party opposing summary judgment also has a burden to provide sufficient evidence supporting his claims to establish a

genuine issue of material fact for trial and to introduce some significant probative evidence tending to support the complaint. *Anderson*, 477 U.S. at 255; *Chaffin v. United States*, 176 F.3d 1208, 1213 (9th Cir. 1999).

B. Eleventh Amendment Immunity

The district court erred in concluding that:

> ....this court finds that WSU is immune from suit under the Eleventh Amendment to the extent Plaintiff seeks monetary damages. WSU, as an arm of the state or state agency, is also not a "person" for purposes of §1983 and accordingly cannot be sued for damages under §1983. (Excerpt 271)

The Board of Regents and the Secretary of the U.S. Department of Education have neglected to present the well-established existing legal authorities which are less supportive of their positions. *Waynne v. Shippensburg University of Pennsylvania*, 639 F. Supp. 76 (M.D. Pa. 1985) The district court then adopted double standard of inquiry and determined that "[t]he court finds merit with both arguments" (Excerpt 267) based on a general argument and narrow inquiry of whether either Washington State University or its Board of Regents is an "arm of the state" in general then entitled to immunity and not a "person" within the meaning of §1983. The court ignored to review the fundamental issues of the cases as stated in paragraph II and left out the immunity issue of the Secretary.

Federal courts has jurisdiction to consider and grant relief against the United States where Congress explicitly waives sovereign immunity. Congress provided a waiver of immunity under the Federal Tort Claim Act ("FTCA") for any claim founded on negligence of an employee of the United States in the same manner and to the same extent as a private individual where the action of complained of was NOT the result of a discretionary function on the part of a federal agency or an employee of the government. 28 U.S.C. §1346, §2671 & §2674, §2680(a). The United States is liable

if the employee's conduct would be a violation of "the law of the place where the act or omission occurred." 28 U.S.C. §1346(b)(1). This liability is consistent with the state statute, RCW 4.92 and RCW 4.24.

The burden of showing the applicability of the discretionary function exception created by 28 U.S.C. §2680(a) lies with the United States. *Reed v. United States Dep't of the Interior*, 231 F.3d 501, 503 (9th Cir. 2000). Both BOR and Secretary provided the court nothing whether the compliance of procedures prescribed by FERPA meets the measure of the discretionary function exception. The district court has duty to make such determination, but did not do so. *Berkovitz v. United States*, 486 U.S. 531 (1988).

In fact, the FERPA compliance was a course of specific conduct for the Secretary and the institution to follow prescribed by FERPA, 34 C.F.R 99, a federal statute and regulation. The discretionary function exception does not apply to FERPA compliance. *Berkovitz*, 486 U.S. at 536. Thus, the Secretary and BOR are liable from a violation of Sakkarapope's due process right and an omission to follow FERPA compliance procedure.

In its Reply (Excerpt 244-55), BOR did not meet a burden of proof whether there is undisputed fact that the Board of Regents with respect to FERPA duty is entitled to the immunity. BOR's immunity claim by citing *Goodisman* as defense in this case is misleading and BOR neglected to address the proper issues.

In its Answer to the complaint, BOR alleged that "Plaintiff failed to file a claim against Defendant as required by RCW 4.92.100 and RCW 4.92.110," (Excerpt 53), the counsel neglected to present the other side of authorities that does not support its ground for summary judgment and claimed that "[h]ere, the State of Washington is immune from suit under the Eleven Amendment and Plaintiff has not shown that the state has waived that immunity." (Excerpt 91)

In fact, the Article II Section 26 of the state constitution explicitly expresses the state consent to suit as a

private person or corporation. RCW 4.92.090. Despite of a discretionary decision or failure to make within official capacity of its officials or members of the governing body, liability remains on the public agency for the tortuous conduct. RCW 4.24.470. Where a state consent to suit in a state forum explicitly expresses, it amounts to consent in the federal forum. For a case as one to enjoin state officers from enforcing a state statue in violation of federal law, it cannot, in any fair sense, be considered a suit against the state. *Regan v. Farmers' Loan & Trust Co.*, 154 U.S. 392 (1894).

There is distinction between the two terms: "the Board of Regents" vs. "Washington State University." Not all of university functions are entitled to Eleven Amendment immunity. *Doe v. Lawrence Livermore National Laboratory*, 65 F.3d 771, 775 (1995). In its Reply (Excerpt 245-9), BOR failed to meet its burden of demonstrating whether "the Board of Regents" performing a FERPA compliance function is entitled to the immunity, but showed the court in its general quality of an arm of the state for such immunity. In fact, the BOR does not perform a discretionary function, but administrative function in compliance with FERPA as a procedure prescribed in 34 CFR 99.60 et seq. It is not immune under the federal standard. However, under the state law, the immunity is waived regardless of function performed. RCW 4.24.470.

Another issue in this case is not whether or not the state is a person for the purpose of 42 U.S.C. §1983, but whether the "Board of Regents" is a "person" for the purpose of §1983. Where the state of Washington and its agencies and officials are not immune from suits under §1983 in the state court, the Board of Regents, a governing body of the agency, is obviously a "person" subject to suit under §1983. Thus, BOR finally realized that the fundamental issue is whether "Washington's waiver of immunity in state courts does not constitute a waiver of immunity in federal courts," (Excerpt 245) in FERPA compliance complaint.

Indeed, the BOR's claim in its Memorandum (Excerpt 91) and Reply (Excerpt 250) is misleading and without merit. In its Reply (Excerpt 250), BOR introduced a false and misleading conclusion that "...those provisions do not address whether Defendants are "persons" for purpose of applying §1983. Moreover, the courts have already decided this question against Plaintiff, as explained above." (Excerpt 250-1) The legal citation of the *Thompson* was neglected because the constitutions of the States of California and Washington are not identical. The University of California was explicitly created as part of the constitution, Article 9 Section 9, and the constitution does not explicitly express consent to be sued. Thus, the legal statuses of the Board of Regents of the two are not comparable. The *Thompson* is not applicable to Sakkarapope's Complaint. Such application of authority suggests that the counsel neglected to demonstrate the other side of legal argument which is not supportive of its position: the BOR is a person subject to suit under §1983 in the state court.

"[B]ecause FERPA prohibits most of the Secretary's functions from being carried out in regional offices, §1232g(g), in order to allay the concern that regionalizing enforcement might lead to multiple interpretations of FERPA, it is implausible to presume that Congress nonetheless intended private suits to be brought before thousands of federal- and state-court judges." *Gonzaga University v. Doe*, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d. (2002) The state superior court does not have jurisdiction over the issue of FERPA compliance, but the Secretary under the FPCO and federal courts. Thus, the state statute of RCW 4.92.010 is inapplicable because it conflicts with the federal statute, FERPA. RCW 4.92.130. (Excerpt 137-9)

Moreover, like the state Attorney General, a suit against BOR in a federal court is not considered the suit against the State. The court considers on a case-by-case basis. *Smyth v. Ames*, 169 U.S. 466 (1898). Indeed, BOR is a "person" and not immune from civil liability in a federal

court where a violation of federal law, FERPA, is at the issue. Where the BOR and the Secretary stripped Sakkarapope's FERPA's rights and prescribed due process right, and the Complaint was brought with a proper venue, (Excerpt 47), Sakkarapope is not barred under the Eleventh Amendment from such suit in the federal court.

C. Collateral Estoppel/Res Judicata Doctrine

The district court erred in concluding that:

> Application of the res judicata doctrine to this matter is appropriate to prevent Sakkarapope from enmeshing the Defendents and this court in the tangles of duplicative litigation....Plaintiff is collaterally estopped from bringing a §1983 action against WSU alleging his constitutional right to Due Process was violated when was dismissed from the Masters in Statistics program. Both WSU and Mr. Sakkarapope were parties to the state court action and the identical issue was raised by Sakkarapope against WSU. The state court entered a final judgment deciding the issue and application of the collateral estoppel doctrine will not work an injustice, therefore all four elements for the application of collateral estoppel are met. Plaintiff hand a full and fair opportunity to argue his claim in state court, with the court stating it had "spent considerable time reviewing the lengthy casefile" and that Plaintiff's pleadings were unreasonably lengthy, confusing, and difficult to follow." This court concurs that Plaintiff has a tendency to submit overlength pleadings and voluminous exhibits. The Plaintiff's §1983 claims arising from his dismissal from the Masters and Doctoral programs are barred by the adverse decision of the Washington state superior court. (Excerpt 269-70)

The entire district court's application of law above and decided that "[t]he court has made a separate inquiry and

determined that Plaintiff's claims against WSU are barred by the doctrines of res judicata and collateral estoppel," (Excerpt 271) was rested on a clearly erroneous finding of a material fact, not supported by the record of evidence, and rested on an inaccurate view of the law. The ruling was irrational and erroneously interpreted a law.

Despite of Sakkarapope's objection and motion for exclusion, Fed. R. Civ. Evid. 403, the district court erred in adopting the Superior Court's Memorandum Decision rested the disputed facts and conclusion of law, and obtained from an unlawful proceeding to be a basis of its decision. The district court also rendered its decision based on insufficient and inaccurate knowledge and understanding of facts behind the Superior Court's Memorandum Decision.

For instance, at the hearing of May 25, 2004, the counsel Vance acknowledged the insufficient knowledge of facts, "...I guess I'm confused." The district court stated "....I don't know.....That's the difficulty I had,..., in trying to discern exactly what testimony the state court entertained and what the court's decision was." (Excerpt 282) The district court's statements that "Plaintiff was a candidate for a Ph.D program in Agricultural Economics ...failed the preliminary qualifying exam...failed to complete the requirements for the Master degree program in a timely manner....," (Excerpt 264-5) and that "...the portion of the petition seeking review of WSU's action under FERPA was untimely and 'will be dismissed,'" (Excerpt 265) were obviously false, not supported by material evidence of facts and resulted from the counsel Gordon's misconduct. (Ct. Rec. 30; Excerpt 169-86).

The citation of the superior court's opinion to conclude that "Plaintiff has a tendency to submit overlength pleadings and voluminous exhibits. The Plaintiff's §1983 claims arising from his dismissal from the Masters and Doctoral programs are barred by the adverse decision of the Washington state superior court," (Excerpt 270) was prejudicial, and not supported by material evidence of facts,

and misrepresented the Complaint. The claims are exclusively FERPA compliance, but some inevitably overlapping issues and material evidence of facts.

The trial court's memorandum opinion was merely an informal expression of the court's views and forms no part of the findings or judgment. It is not part of the findings of fact and judgment entered. *Raymond W. Clifford et. al. v. the State of Washington*, 20 Wn.2d 527. "Such an opinion does not constitute either findings of fact or conclusions of law. This being so, it is not commendable practice for a court in its formal findings to refer to and incorporate a portion of a written opinion on file." *Bancroft's Code Practice and Remedies*, Vol. 2, § 1682, p. 2161.

> "It is said to be commendable practice for a trial court to furnish counsel or file with the records a statement announcing the reasons for its decision. Such a statement, however, is in no way binding; its only function is to indicate the judge's opinion as to the points involved and his views as to the law applicable. The statement of reasons constitutes no part of the decision of the court, is insufficient as a finding of fact, and should not be inc orated into the conclusions of law; it may indeed be modified or nullified by the making of findings of fact and conclusions of law, or by the entry of a judgment, inconsistent therewith, and it may not be employed to impeach the findings." *Raymond W. Clifford et. al. v the State of Washington*, 20 Wn.2d 527

WSU and the counsel Gordon also abused of process in obtaining such Memorandum Opinion and the Order of March 5, 2004; the proceeding of motion for summary judgment in the superior court was mistrial and unconstitutional; the decision was then useless. It was obtained through an unlawful proceeding. A superior court is not authorized to hear a petition for judicial review brought pursuant to the Chapter 34.05 RCW on a motion for

summary judgment. RCW 34.05.590; RCW 34.05.510 et. seq. It is required to set for trial based on records.

Once Sakkarapope filed a motion for supplemental jurisdiction and withdraw the controversial subject matter off the Petition, the state trial court lacks of jurisdiction over the subject matter and the state trial court's decision became legally moot and unconstitutional. Both the state court and the district court recognized Sakkarapope's action (Excerpt 265), but ignored the legality of the issue. Indeed, the res judicata doctrine is not applicable. (Excerpt 139-40)

In fact, the four elements for application of collateral estoppel are not met as the district court's conclusion. The subject matter and cause of action are not the same. The parties in the Petition for Review and the Complaint are not necessarily legally identical. Where the state superior court dismissed Sakkarapope's Petition for Review on motion for summary judgment or the case due to untimely submission and/or the issues, the subject matters were not actually litigated. Sakkarapope was not afforded a full and fair opportunity to litigate in the state court. Thus, the collateral estoppel is not applicable to such dismissal. *Marquardt v. Federal Old Line Ins. Co.*, 33 Wn. App. 685, 658 P.2d 20, 689 (1983). The district court's conclusion was made in error.

The Complaint was a subsequent action of the Secretary's final decision of January 20, 2004, not the consequence of the state court's final judgment. Such timing of filing was simply co-incidental. Sakkarapope did not file a complaint to re-litigate the subject matters in the Petition; nor asked the district court to review the state court final judgment. The district court's perception was prejudicial and irrational. The "Res judicata does not bar claims which arise out of a transaction separate and apart from the issue previously litigated." *Schoeman v. New York Life Ins. Co.*, 106 Wn.2d 855, 860, 726 P.2d 1 (1986) (citing *Seattle-First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 226, 588 P.2d 725 (1978)).

Since the state superior court does not have jurisdiction over the issue of FERPA compliance, BOR's argument that the exhaustion doctrine barred Plaintiff's claim (Excerpt 96-7) was without merit. A judicial review in the state court is not avenue for FERPA compliance issue. Such exhaustion is not required on Section 1983 suits. *Patsy v. Board of Regents of the state of Florida*, 457 U.S. 496 (1982); *Burnett v. Grattan*, 4o8 U.S. 42 (1984).

The constitutional prohibition against double jeopardy includes within it the right of the defendant, who is not the state, to plead "collateral estoppel." 397 U.S. 436. (Excerpt 141-4) If the federal plaintiff and the adverse party are simultaneously litigating the same or a similar dispute in state court, the federal suit may proceed under the long-standing rule permitting parallel state and federal litigation. *Atl. Coast Line*, 398 U.S. 295; *Noel v. Hall*, 341 F.3d (9th Cir. 2003).

The district court erred in granting BOR's Motion for Summary Judgment because it did not meet the standard review: (i) the presence of disputed issues of facts, (ii) the counsel's misconduct and the pleadings did not comply with Fed. R. Civ. Proc. Rule 11, (iii) the counsel's negligence in presenting evidence and authorities, and (iv) the violation of Plaintiff's due process right to have a full, fair, impartial opportunity in the judicial proceeding. As the court of original jurisdiction, the court should not adopt the disputed facts and an informal expression of the state court's views without sufficient supporting evidence of records. Such decision relied upon therein constitutes abuse of discretion.

D. FERPA Claim against the Board of Regents and the Secretary of the U.S. Department of Education

The district court erred in concluding that "Plaintiff does not have a private right of action to bring a 42 U.S.C. §1983 suit based on violation of FERPA." (Excerpt 271) The agreement of the district court with Secretary's contention was mislead and arguably. The Supreme Court's decision and opinion that "FERPA does not create a private right" arose from the relevant FERPA provision, in which the Supreme

Court referred to the underlying provision of 20 U.S.C. §1232g(b), nondisclosure provision. *Gonzaga University v. Doe*, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d. (2002), The U.S. Supreme Court did not specifically hold that 20 U.S.C. §1232g(a) does not create individual rights enforceable by §1983.

In the light of *Taylor v. Vermont Department of Education*, 313 F.3d 768, 786 (2nd Cir. 2002), the district court and defendants ignored a fundamental difference between *Taylor* and *Sakkarapope*. Taylor was not a student and did not pursue administrative due process as prescribed by FERPA. Taylor did not file a complaint with the Secretary. On the other hand, Sakkarapope had exhausted FERPA's administrative procedure for FERPA compliance. The Secretary and BOR stripped Sakkarapope's FERPA's rights.

For a statute to create such private rights, its text must be "phased in terms of the persons benefited." *Cannon v. University of Chicago*, 441 U.S. 677, 692, n. 13 (1979). FERPA does create not only rights for both students and their parents, "the right to inspect and review their education records," under 20 U.S.C. §1232g(a), but also a due process for enforcing and protecting those rights as prescribed in 34 C.F.R 99. *See* also, WAC 504-21-030. It is presumptively enforceable by 42 U.S.C. §1983. The Secretary has administrative duty to enforce FERPA compliance and afford due process to the students/parents. "Since FERPA was enacted in 1974, all of the Federal Courts of Appeals expressly deciding the question have concluded that FERPA creates federal rights enforceable under §1983. Nearly all other federal and state courts reaching the issue agree with these Circuits." (*See Gonzaga*, in dissenting)

The court distinguished "*Gonzaga* from *Wright* and *Wilder*, where an aggrieved individual lacked any federal review mechanism." Where Sakkarapope had exhausted administrative due process as prescribed by FERPA, he lacked any federal review mechanism to recourse from the

failure to perform official duty, the state and federal stripping his FERPA's rights, and the violation of federal rights guaranteed by the Fourteen Amendment. Nothing in *Gonzaga* barred a suit in a federal court where: (i) Defendant is alleged violation of §1232g(a) and due process rights guaranteed by the Fourteen Amendment, and (ii) the FERPA adjudication has failed to enforce the provisions against the defendants.

A suit in federal court based on a constitutional claim on the deprivation of rights under FERPA is permitted. *Krebs v. Rutgers, The State University of New Jersey*, 797 F. Supp. 1246 (D.N.J. 1992). "Section 1983 provides a remedy only for the deprivation of 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Gonzaga University v. Doe*, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d. (2002).

Therefore, the BOR's argument that "Plaintiff's claims alleging such violations fail as a matter of law," (Excerpt 90-2) is flaw and without merit. The counsel has neglected to demonstrate whether the legal authority cited is applicable to the case. The facts presented show that there are genuine issues for trial as matter of law.

E. Overlapping of Howard Grimes' Action in Retaliation of Exercising Due Process Right Under FERPA.

The facts in the records show that Howard Grimes terminated Sakkarapope from the master program was not involved with scholastic standard, but a disputed fact of a completion deadline and Grimes' retaliation. No hearing was afforded. (*See* Excerpt 148-86; Ct. Rec. 30) Where scholastic standards are not involved, but rather disputed facts concerning whether plaintiff did or did not comply with certain school regulations. These issues adapt themselves readily to determination by a fair and impartial "due process" hearing. *Brookins v. Bonnell*, 362 F. Supp. 379, 383 (E.D. Pa. 1973). Grimes' action of the termination was motivated by more than one cause including FERPA compliance. To date, Grimes still withholds Sakkarapope's educational records

and did not release any records under his capacity of the chairperson of the CGSRR. Such overlapping of state and federal claims is necessary and cannot be fully exclusive. Thus, the district court should not bar such claim of violation of due process by Grimes. Such order was made in error and created injustice in the judicial system.

F. Counsel Misconduct and Abuse of Discretion

The counsel of BOR has signed and submitted court documents that do not substantially comply with Fed. R. Civ. Proc. Rule 11. The counsel submitted the state trial court's Memorandum and Order either without sufficient knowledge of the subject matter and the truth or with bad faith and knowledge of the counsel Gordon's misconduct in the state court's proceedings. After a motion for sanction was served, the counsel took no action. Such filing documents with the court of law substantially causes a complete miscarriage of justice and does not comply with the Rules of Professional Conduct and Fed. R. Civ. Proc. Rule 11.

Despite of Sakkarapope's Motion for Sanction, request for filing additional records of fact and his partial summary judgment, and Objection and Motion to exclude the disputed facts (Excerpt 114-23, 239-43, 256-62), the district court ignored and denied all. The entire district court's application of law above was substantially rested on a clearly erroneous finding of a material fact, not supported by the record of evidence, and rested on an inaccurate view of the law. The ruling was irrational and erroneously interpreted a law. Such ruling and decision constitute abuse of discretion. *United States v. Finley*, 301 F.3d 1000, 1007 (9th Cir. 2002); *Chang v. United States*, 327 F.3d 911, 925 (9th Cir. 2003); *United States v. Sherburne*, 249 F.3d 1121, 1125 (9th Cir. 2001); *United States v. Beltran-Gutierrez*, 19 F.3d 1287, 1289 (9th Cir. 1994); *Richard S. v. Dep't. of Developmental Servs*, 317 F.3d 1080, 1085-86 (9th Cir. 2003); *United States v. Iverson*, 162 F.3d 1015, 1026 (9th Cir. 1999); *United States v. Schmidt*, 99 F.3d 315, 320 (9th Cir. 1996). Therefore, such ruling and decision was arbitrary and

unconstitutional. The party's right was substantially violated. Such ruling should not remain in effect as a legal authority in any manner under the court of law. This court should reverse and declare the district court's order and decisions mistrial and unconstitutional.

VII. CONCLUSION

Appellant respectively believes the district court's decision was made in error in application of law, was not substantially supported by material evidence of fact, and substantially violated Sakkarapope's statutory right to fair and full opportunity litigation. Appellant respectively asks this court reverse and declare the district court mistrial and unconstitutional.

It is requested the court for judgment granting relieves as stated in the Complaint awarding fees and expenses incurred in connection with both administrative and judicial proceedings, and monetary compensation for opportunity lost and damages in property interest, personal career and reputation, life and liberty from the deprivation of rights in a sum amount not less than the amount as equivalent to the loss of opportunity from his professional career.

In such case that this court remands any matter to the district court, it is further requested that this court transfers the entire case to the Western District of Washington for further proceedings.

RESPECTFULLY SUBMITTED this 4th day of November, 2004.

s/ B. Sakkarapope
Appearing Pro Se Appellant

No. 04-35643
USDC ED WA No. CV-04-0074-JLQ

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Appellant,

V.

THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY, and

THE SECRETARY,
THE UNITED STATES DEPARTMENT OF EDUCATION,
Appellees.

APPEAL

United States District Court
Eastern District of Washington

REPLY BRIEF OF APPELLANT

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PART A: STANDARD REVIEW AND SUMMARY OF ARGUMENTS

I. Standard Review

1. Claim Preclusion/Res Judicata The trial court's determination that claim preclusion (res judicata) applies is reviewed de novo. *Littlejohn v. United States*, 321 F.3d 915, 919 (9th Cir. 2003). (noting mixed questions of law and fact). The district court's dismissal on that ground is reviewed de novo. *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002). A trial court's grant of summary judgment on that ground is reviewed de novo. *Akootchook v. United States*, 271 F.3d 1160, 1164 (9th Cir. 2001).

2. Collateral Estoppel/Issue Preclusion Issues regarding collateral estoppel (issue preclusion) are reviewed de novo. *Littlejohn v. United States*, 321 F.3d 915, 919 (9th Cir. 2003) (noting mixed questions of law and fact). The preclusive effect of a prior judgment is a question of law reviewed de novo. *Jacobs v. CBS Broadcasting, Inc.*, 291 F.3d 1173, 1176 (9th Cir. 2002).

3. Immunities Immunity under the Eleventh Amendment presents questions of law reviewed de novo. *Pacific Bell v. Pac-West Telecomm, Inc.*, 325 F.3d 1114, 1123 n.8 (9th Cir. 2003). Whether a party is immune under the Eleventh Amendment is also reviewed de novo. *State Bd. of Equalization v. Harleston*, 331 F.3d 699, 701 (9th Cir. 2003). The type of immunity to which a public official is entitled is a question of law reviewed de novo. *Mabe v. San Bernardino County*, 237 F.3d 1101, 1106 (9th Cir. 2001). Whether federal rights asserted by a plaintiff were clearly established at the time of the alleged violation is a question of law reviewed de novo. *Mena*, 332 F.3d at 1266 n.17.

The existence of sovereign immunity is a question of law reviewed de novo. *Porter v. Jones*, 319 F.3d 483, 489 (9th Cir. 2003); *Sierra Club v. Whitman*, 268 F.3d 898, 901 (9th Cir. 2001)(whether immunity has been waived is a question of law reviewed de novo). Dismissals based on

sovereign immunity are reviewed de novo. *Blaxland v. Commonwealth Dir. of Public Prosecutions.*

4. Civil Rights A district court's grant of summary judgment in a 42 U.S.C. § 1983 action is reviewed de novo. *Diruzza v. County of Tehama*, 323 F.3d 1147, 1152 (9th Cir. 2003). Whether specific facts constitute a violation of established law is a legal determination reviewed de novo. *Mabe*, 237 F.3d at 1106. The court's decision whether a party is immune from a § 1983 action is reviewed de novo. *See Webb v. Sloan*, 330 F.3d 1158, 1163 n.4 (9th Cir. 2003). Standing to assert a claim under § 1983 presents a question of law reviewed de novo. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1152 (9th Cir. 2000). A district court's decision whether to exercise supplemental jurisdiction in a §1983 action is reviewed de novo. *Ove v. Gwinn*, 264 F.3d 817, 821 (9th Cir.2001). (*See also*, Addendum 120-5)

II. Summary of Arguments

The Secretary's counterstatements of issue and arguments therein were made based on a wrong party, wrong issue and misleading foundation of law as well as the false statements of the case and the facts. The entirety of the Secretary's arguments are fundamentally invalid and out of the context of the instant case. The bases of the Secretary's arguments were not based on the actual Supreme Court's opinion, but lower courts' interpretations of *Gonzaga.*

The Secretary misleads this court by citing *Taylor* and a footnote opinion as a legal authority. In *Taylor*, the Second Circuit did express the fact that "*Gonzaga*'s discussion does appear to be limited to the §1232g(b) non-disclosure provisions" in its opinion. Who knows if the Supreme Court hears this instant case, the divided opinion might turn otherwise. None of the case authorities cited by the Secretary arose from a §1983 suit against the Secretary from failure to enforce FERPA. The failure leads to a deprivation of a student's right and the public interests at large at risk. That is what this instant case is all about.

A civil enforcement proceeding of motion for summary judgment, CR 56, is NOT authorized to be incorporated with the APA. RCW 34.05.590; *Eastlake Community Council v. City of Seattle*, 64 Wn. App. 273, 276, 823 P.2d 1132 (1992); *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999). Thus, the trail court's order of March 5, 2004 was obtained through an unauthorized proceeding. Such order is unconstitutional and useless. The BOR's arguments are made based on an unlawful order of the state trial court..

The BOR's and the Secretary's arguments are fundamentally flaw, and not based on the undisputed material evidence of facts, neglected to present the well-established existing legal authorities which are less supportive of their positions.

The BOR is not immune and it is considered a "person" within the meaning of §1983. Both doctrines of res judicata and collateral estopple do not bar Sakkarapope's claims in the federal forum.

The district court's ruling constitutes abuse of discretion because it was rested on a clearly erroneous finding of a material fact, not supported by the record of evidence, and rested on an inaccurate view of the law. The counsels have committed professional misconduct in the proceeding.

PART B: REPLY AND OBJECTION TO THE SECRETARY

I. OBJECTIONS TO THE SECRETARY'S BRIEF OF APPELLEE*

1. Appellant respectfully submits objection to and asks this court to strike out the statements in the Secretary Brief of Appellee ("Secretary Br.") that:

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* A motion to strike is being filed with this court.

> This is a civil case...brought suit against Washington State University (hereinafter referred to as "WSU") and the United Stated Department of Education (hereinafter referred to as "DOE") for nonspecific damages result from Plaintiff's disenrollment from a Master's degree program at WSU based upon his failure to complete the requirements of the program in a timely manner...In addition to his allegations against WSU, Plaintiff brought an action against the DOE under the Family Educational Rights and Privacy Act (hereinafter referred to as "FERPA"), alleging DOE failed to properly investigate his complaint against WSU's decisions to disenroll him. (Secretary Br. 2)
>
> ...a former WSU student... (ER 264) While a student in a Masters degree program in 2000, Plaintiff failed to qualify for admission to a Ph.D. program at WSU. (ER 264-5) Subsequently, in February, 2003, Plaintiff was also disenrolled from his Masters program at WSU from failing to complete the requirements in a timely manner. (ER 265) (Secretary Br. 4-5)

The statements are plainly false, misleading, misrepresented of the Complaint, and prejudicial. In the Complaint, Sakkarapope explicitly named two defendants—the BOR and the Secretary, NOT WSU and DOE. The statement, "based upon his failure to complete the requirements of the program in a timely manner," is false and misrepresented. (Appellant's Supplemental Excerpt ("Appt. Sup. Excerpt") Vol. II 484-9, 499-502, 533-4; Excerpt 14) (Addendum 79-119)

Since Sakkarapope's Petition for Review of WSU's decisions pursuant to the state APA, RCW 34.05 is pending for review by the state appellate courts and the state Supreme Court has not yet decided the issue of stay enforcement of the state trial court's decision of March 5, 2004, his student's

status at WSU is in question. Such statement that he is a former student is legal conclusion, misleading and prejudicial.

The statement, "alleging the DOE failed to properly investigate his complaint against WSU's decision to disenroll him," is false and misrepresented. None of these complaints filed with the FPCO and with the district court states or suggests such allegation. (Appt. Sup. Excerpt Vol. I 71-134; Excerpt 160-8)

The district court's finding of facts rested on false and misleading material of evidence, and was not sufficiently supported by legitimate material facts of evidence. The state trial court's memorandum opinion was merely an informal expression of the state trial court's view; it does not constitute either findings of fact or conclusions of law. In response to Sakkarapope's opposition, the state trial court added the item #6 in the order prepared by the state attorney, authorizing any disputes must be addressed in the state appellate court. (Excerpt 88) An objection and motion for exclusion was also made before the district court. (*See* Brief of Appellant ("BOA") 20-2) Such memorandum can be used for only discussion, but cannot be cited as a fact or conclusion of law in any legal proceeding.

In addition, the district court stated at the hearing of May 25, 2004, that:

> Well, that's what somebody from the state attorney general's office wrote and the judge signed...No, I'm just saying it's problematic when a lawyer writes out what the Judge is deciding...That's the difficulty I has, Miss Vance, in trying to discern exactly what testimony the state court entertained and what the state court's decision was.... (Excerpt 281-2)

Such expression suggests the district court did not really understand the material facts presented before it. Indeed, the memorandum opinion and the order of March 5,

2004, are subject to exclusion under Fed. R. Civ. Evid. 430 (BOA 20)

2. Appellant respectfully submits objection to and asks this court to strike out the statements in the Secretary Brief of Appellee ("Secretary Br.") that "...related to his disenrollment from a graduate degree program at WSU,"(Secretary Br. 3) is misleading and prejudicial. The nature of the Compliant alleges the BOR and the Secretary related to the denial of rights to inspect and review of educational records and due process right prescribed by FERPA. The consequence of failure to comply with FERPA led to such dismissal/disenrollment which is the real damage that can be assessed monetarily. The statements in the Complaint page 15-17 are reasonably clear. (Excerpt 15-7)

II. COUNTERSTATEMENT OF THE ISSUES

1. When performing a specific function of FERPA compliance: (i) is the Secretary of the U.S. Department of Education ("Secretary") a "person" the meaning of §1983?, (ii) does the Secretary perform administrative duty, not discretionary function?, and (iii) is an immunity defense available to the Secretary?

2. By closing all Sakkarapope's complaints with no finding and determination, whether: (i) the Secretary violates Sakkarapope's FERPA due process right, (ii) the FERPA due process right guaranteed by the Constitution, (iii) whether the Secretary has deprived Sakkarapope's due process rights under FERPA and the federal Administrative Procedure Act, 5 U.S.C. §551.

III. COUNTERSTATEMENT OF THE FACTS

1. The Secretary did not move the district court either with a joint or its motion for summary judgment or a separate motion for dismissal, but asserted its request in its reply to Motion to Show Cause on the question of the applicability of the *Rooker-Feldman* doctrine. (Excerpt 102-5, 212-4)

2. The material evidence of facts in related to the Secretary's actions alleged from December 5, 2003 through January 20, 2004, are not yet on file. These records were cited in the Complaint. The district court prohibited further filing. (Excerpt 237-8) Pursuant to Fed. R. Civ. Proc. 26(a), the Secretary did not disclose any records of evidence of its FERPA proceedings to the parties.

IV. REPLY TO THE SECRETARY'S ARUMENTS

1. Appellant respectfully submits objection to the Secretary's counterstatement of issue and arguments therein because it was made based on a wrong party, wrong issue and misleading foundation of law as well as the false statements of the case and the facts as stated in paragraph I, Part B above. Appellant respectfully believes that the Secretary has statutory duty to answer the issues set forth for appeal. A counterstatement of issue should be made after such obligation is fulfilled if it believes there is in that extent. By not providing a direct answer to the BOA, it is equivalent to that the Secretary has no arguments.

The statement claiming that "Plaintiff's attempt to bring other issues for the first time on appeal were inappropriate and untimely," has no merit; it is not supporting by the facts in the court records. (Secretary Br. 8) Because it was made by the so-called competent US attorney, it is reasonable to believe that the counsel attempted to mislead this court and excuse himself from answering the issues in the BOA. The district court did not permit any further filing after May 25, 2004, and it ruled that the motion for summary judgment was to be decided without oral argument and stated all briefings were already in. (Excerpt 237-8, 284-5).

If the counsel did properly perform it duty and carefully read all pleadings filed, he should know that all the issues brought in this appeal were previously raised in Sakkarapope's pleadings filed with the district court. Such accusation is false, misleading and prejudicial.

Where the defendants did not assert any claim or provide a response, it lost a right to bring any issue here. The legal authorities cited apply to the Secretary, indeed, not Sakkarapope. Also, the standard review on summary judgment appeal is reviewed de novo. This court takes the same position as the district court. Thus, Sakkarapope has full right to bring all issues previously raised in his briefings on appeal. The issues on this appeal are not limited to only what the district court judge selectively entertained. Such accusation suggests either a misperception or a bad faith in carrying the litigation that is unfair to the opposing party.

2. The United States is not a party in this instant case, but the Secretary. Like a suit against an attorney general is not a suit against the state, the representation by the United States' Attorney and a suit against the Secretary do not constitute a suit against the United States. *Smyth v. Ames*, 169 U.S. 466 (1898); *Idaho v. Coeur D'Alene Tribe of Idaho*, 117 S.Ct. 2028, 138 L.Ed.2d 438(1997). By referring to a wrong party, the entire arguments therein are misleading, prejudicial, and out of the context. Therefore, Appellant respectfully asks this court strike out any argument arise from such misrepresentation induction or implication.

3. The Secretary rested its arguments on the *Gonzaga v. Doe*, 536 U.S. 273 (2002) and *Taylor v. Vermont Dept's of Educ*. Appellant respectfully submits that the arguments are fundamentally flaw.

(A) The Supreme Court itself was divided in its opinion of *Gonzaga*. The majority held that the non-disclosure provisions, §1232g(b)(1), do not confer federal rights enforceable through a §1983 action. But a record-access provision, §1232g(a) is underlying the suit in the instant case.

In *Taylor*, the Second Circuit interpreted the *Gonzaga* that:

> Although *Gonzaga*'s discussion does appear to be limited to the §1232g(b) non-disclosure provisions, we need not to determine whether *Gonzaga*'s express

> holding applies to §1232g in its entirety because, applying the analysis set forth in *Gonzaga*, we conclude that plaintiff does not have the personal right required for a §1983 claim under §1232g(a). [Emphasis added].

The Secretary cited a footnote of *Desyllas v. Bernstine*, 351 F.3.d 934, 941 (9th Cir. 2003). Such footnote does not constitute a legal authority, but an informal opinion of the court based on a circumstance before it, not from deciding a case on merit. Such citation is without merit. This court should not pre-judge this instant case based on such footnote opinion.

Indeed, the bases of the Secretary's arguments were not based on the actual Supreme Court's opinion, but lower courts' interpretations of *Gonzaga*, which were derived from a special circumstance of the case before it. Such opinions are not necessarily applicable to the instant case. The Secretary misleads this court by citing *Taylor* and the footnote. In fact, the Second Circuit did express the fact that "*Gonzaga*'s discussion does appear to be limited to the §1232g(b) non-disclosure provisions" in its opinion. Who knows if the Supreme Court hears this instant case, the divided opinion might turn otherwise.

(B) None of the case authorities cited by the Secretary arose from a §1983 suit against the Secretary under FERPA through the due process right guaranteed by the Fourteen Amendment. All the cases cited were the cases alleging educational institutions violated FERPA, not **the Secretary's failure to enforce FERPA** as required by §1232g(f) and(g), and that leads to a deprivation of a student's right and **the public interests at large at risk**.

Therefore, the entirety of the Secretary's arguments are fundamentally invalid and out of the context of the instant case.

4. The FERPA statute clearly defines the terms, "an educational institution," "an eligible student or a parent of an

eligible student," and the "Secretary." 34 C.F.R 99 (Addendum 53-5) The Secretary is NOT an educational institution and that it has nothing to do with whether it complies with §1232g(a) through (e) and (h) through (j), BUT has statutory duty to enforce the FERPA as prescribed in §1232g(f) and(g), §1231c, and§1221e-3; 34 C.F.R. 99. (Addendum 42-66) The Secretary does not have custody of Sakkarapope's educational records in dispute.

In the instant case, the allegation against the Secretary is whether the Secretary failed to comply with the prescribed "FERPA complaint procedure" regarding the BOR withholding and/or destroying Sakkarapope's educational records, and refusing his right to inspect and review the records under §1232g(a). (Excerpt 13; App. Sup. Excerpt 78-134) Therefore, the statement, "alleging the DOE failed to properly investigate his complaint against WSU's decision to disenroll him," was indeed false, misrepresented, prejudicial and out of the context.

The issues in the BOA #1,#5, and #9 can be rephrased: (i) whether the Secretary violates Sakkarapope's FERPA due process right by closing all his nine separate complaints with no finding and determination, (ii) whether the FERPA due process right guaranteed by the Fourteen Amendment, the U.S. Constitution, (iii) whether the Secretary has deprived Sakkarapope's due process rights under FERPA and the federal Administrative Procedure Act ("Fed. APA"), 5 U.S.C. §551. (Addendum 1-5; Excerpt 13; Appt. Sup. Excerpt Vol. I 57-259; BOA 2-3)

5. The facts in the records clearly speak for themselves and show that the Secretary intentionally neglected and refrained itself from performing its FERPA statutory duty. (App. Sup. Excerpt 57-259) The duties under §1232g(f) and(g), §1231c, and§1221e-3 clearly are not discretionary. The immunity is not available to the Secretary. *Berkovitz v. United States*, 486 U.S. 531 (1988).

6. FERPA does create a student's right to inspect and review his education records considered a federal right under

20 U.S.C. §1232g(a) and due process to enforce that right as prescribed in 34 C.F.R 99.60 et. seq. The FERPA complaint procedure is required by §1232g(f) and (g) and imposed upon the Secretary to perform. (Addendum 48) Such due process is guaranteed by the Fourteen Amendment of the constitution of the United States.

Relief is said to be available for § 1983 claims involving substantive due process only where there is a substantial infringement of state law prompted by animus directed at an individual or a group, or a "deliberate flouting of the law that trammels significant personal or property rights". *Silverman v. Barry,* 845 F.2d 1072, 1080 (D.C. Cir.), cert. denied, 488 U.S. 956 (1988). Arbitrary, irrational action on the part of regulators is sufficient to sustain a substantive due process claim under § 1983. *Coniston Corp. v. Hoffman Estates,* 844 F.2d 461, 467 (7th Cir. 1988); Abbiss, 712 F. Supp. at 1164.

The suit against the Secretary arose from the FERPA complaint procedure as a federal due process right of a student to make a complaint of FERPA violation and to enforce FERPA. The failure to perform his statutory duty has deprived Sakkarapope's due process right guaranteed by the Fourteen Amendment. Such failure is actionable under §1983. *Gonzaga University v. Doe*, 536 U.S. 273, 122 S.Ct. 2268, 153 L. Ed. 2d. (2002). (Excerpt 134-7) Now, it should be clear to this court and the Secretary that the counterstatement of issue and the district court's view of law are out of the context of the instant suit.

Such failure leads to promoting an endless ongoing of violation of federal statute, FERPA, by the state officials, and that does not fulfill the legislative intent. 34 CFR 99.2 (Addendum 53), and that is destroying healthy educational environment and academic development and progression, and that is not at the public interests of the people of the great State and United States of America, a great civilized nation. This instant suit is greater than just Mr. Sakkarapope's personal or an individual's interest, but for all American and

foreign students. Such stake is warranted by the Fourteen Amendment to proceed a suit under §1983.

Sakkarapope's case is a good example for the court to consider. The Secretary failed to perform its FERPA duty. How many students became victims of the state officials' violation of the federal statute? And how many more the courts will consider sufficiently enough to represent. Any argument that a removing an individual's right, such as Sakkarapope, would not harm the public interest or legislative intent. Appellant respectfully asks this court to rethink again if such opinion still exists after reviewing this entire instant case on merit.

PART C: REPLY AND OBJECTION TO THE BORAD OF REGENTS

I. OBJECTIONS TO THE BOARD OF REGENTS' BRIEF OF APPELLEE*

Appellant respectfully submits objection to and asks this court to strike out the entirety of the BOR's statement of the case because the contents were rested on the state trial court's order of March 5, 2004 and its memorandum opinion which substantially contains false, inaccurate, misleading and/or disputed facts. The statements of facts and conclusions of laws prepared by the state lawyer and signed by the state trial court judge are not sufficiently supported by material evidence of facts in the records†. The objections

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* A motion to strike is being filed with this court.

† The state trial court clearly stated at the hearing on the Motion for Summary Judgment, February 6, 2004, prior to the memorandum opinion was issued February 17, 2004, that:

> ....particularly **challenge whether it is a complete record And there's challenges made as to whether things are missing, and there's challenges that decisions were made on things, on bases that are not within the record, I'm probably going to be very reluctant,** here, on summary judgment, today, to rule rule in favor of the University on that particular issue. Because I think the fact that I mean, I just feel off-hand the fact that **there is a challenge to the completeness of the record**

were made, and the issues of disputed facts are pending before the state appellate court to decide. (*See* also, Part B.I above; App. Sup. Excerpt 289-336, 473-558, Excerpt 114-23, 169-86; 281-3).

Judicial review of disputed issues of fact shall be conducted by the court confined to the agency record for review. RCW 34.05.558. A civil enforcement proceeding of motion for summary judgment, CR 56, is NOT authorized to be incorporated with the APA. RCW 34.05.590. "The APA does not expressly authorize summary judgments, but case law has established that agencies may employ summary proceedings." *Eastlake Community Council v. City of Seattle,* 64 Wn. App. 273, 276, 823 P.2d 1132 (1992); *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.,* 102 Wn. App.1, 14, 979 P.2d 929 (1999).

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and there's documentation, or at least argument, with respect to that particular issue, I think that raises a genuine issue of fact as to whether everything is there that relates to due process, and whether decisions were made in an arbitrary and capricious fashion, and other issues that **relate to the merits of the case.** So I think I'm going to be reluctant at this stage to make a final ruling of summary judgment on that ground, just on the basis that I think the arguments that I've been hearing, here, **regarding discovery and incompleteness of the record** going to have to decide an administrative appeal on the record, and we're getting to the merits, **I think that probably a genuine issue of material fact....I think that there is extreme merit,** ....

While there are issues being raised here as far as the completeness of the record, and while I think because of that I'm going to be reluctant to decide in summary judgment the merits of the case, ...with respect to a couple of those issues I **I see a lot of merit.** ... --the bottom line, here, **I see a lot of merit to those issues**. I've got some reluctance on the getting into the merits....because there is this dispute on what the record is, I think I'm probably probably going to be reluctant to feel that I can make decisions as a matter of law on the merits of the case. But And on I'm going to have to take a very close at These are complicated issues. And I don't want (inaudible); it's obviously important to everybody concerned here. (Report of Proceeding ("RP") 69-76) [Emphasis added]

WSU does not have a statute to allow a summary judgment. Despite of Sakkarapope's objection to the proceeding, the state trial court abused of discretion to hear the Motion for Summary Judgment where the procedure is not authorized under the provision. *State Ex Rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). The state counsel abused of process.

Therefore, the proceeding of the Motion for Summary Judgment of February 6, 2004 was unlawful. The trail court's order of March 5, 2004 was obtained through an unauthorized proceeding. Such order is unconstitutional. Despite of all BOR's arguments, the trial court's order of March 5, 2004 was useless. This court should strike out of all implication or induction arise from such unlawful order.

II. COUNTERSTATEMENT OF THE ISSUES

1. Is the provision of RCW 4.92.010 unconstitutional, invalid?

2. Have the state statutes divested the Washington State University of sovereign immunity?

III. REPLY AND OBJECTION TO THE BORAD OF REGENTS

1. The BOR is a person in the meaning of 42 U.S.C. §1983 and the Eleventh Amendment Immunity Is Not Available for the BOR.

While the sovereign immunity doctrine is recognized by American courts, the availability of this defense varies greatly from state to state since the doctrine has been abrogated or modified in many states, including the State of Washington, by judicial decisions, state legislation, or a combination of the two*. When such immunity defense is raised by the Board of Regents ("BOR"), the court must first determine whether the BOR is an institution as an arm of the

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* The cases and authorities are collected in "Modern Status of Doctrine of Sovereign Immunity as Applied to Public Schools and Institutions of Higher Lerning," 33 A.L.R.3d 703 (1970 and periodic supp).

state. If the court finds that the BOR is an institution as a state entity, then the court must determine whether the BOR has taken some action that would divest the institution of sovereign immunity, at least for purposes of the lawsuit. E.g, *Florida's Tort Claim Act, Fla. Stat.* 768.28 (1985); *Washington's Actions and Claims Against State Act*, Chapter 4.92 RCW.

The BOR is not immune from negligence suits under either sovereign or charitable immunity, liability defends, first, on whether the action fit the legal definition of the tort with which it is charged; and second, on whether the action is covered by one of the recognized defenses that protect against liability for tort with which it is charged. For the tort of negligence, the legal definition is met if the BOR owed a duty to the injured party but failed to exercise due care to avoid the injury. Whether or not a duty exists is a matter of state common law. *Lombard v. Fireman's Fund Insurance Co.*, 302. 2d 394 (La. Ct. App. 1974). A "special relationship" between the higher education institution and its students gives rise to a duty beyond that owed to invitees or to the general public. *Kleinknecht v. Gettysburg College*, 989 F.2d 1360 (3d Cir. 1993).

In the instant case, FERPA's compliance duty was imposed upon Washington State University by the federal statute, 20 U.S.C. §1232; 34 CFR 99, then the BOR as its "governing body," has duty to comply with respect to due process of law guaranteed by the Fourteen Amendment. Where WSU adopted a brief adjudicative proceeding as prescribed by the state APA, RCW 34.05.485 et seq. and WAC 504-04-010(4), the BOR has additional duty imposed upon it to fully comply with the prescribed proceedings in 34 CFR 99, RCW 34.05.485 et seq. and WAC 504-04-010(4). In the extent, the FERPA compliance is not solely a government function, but a federal duty was imposed upon both private and public education institution entities to perform.

The question of law is NOT whether Washington State University is a state entity or an arm of the state, then immune from suit in a federal court. The issue is NOT whether the BOR is part of the state agency, RCW 28B.30, since it is a governing body of WSU. The legal inquiry in this instant case is whether the state statutes have divested the institution of sovereign immunity. Sovereign immunity is unavailable in institutions where the state entity is not performing a governmental function, but one that a private entity could perform. *Brown v. Florida State Board of Regents*, 513 So.2d 184(Fla. Dist. Ct. App. 1987).

Specifically, Sakkarapope's complaint explicitly brought the questions of law before the federal courts are, **when performing a function of FERPA compliance**, whether: (i) the BOR is an arm of the state, (ii) the BOR is a person for the purpose of the Section 1983 suit, and (iii) an immunity defense is available to the BOR. In the extent, whether the State of Washington has expressly waived its immunity by the state's statutes and what condition the statute is invalid.

The undisputed fact in the records shows that, until this date, the BOR still withholds the Sakkarapope's requested educational records. (*See* Brief of Appellant ("BOA") 7-8; Excerpt 43-5). Sakkarapope did not owe WSU any penny of tuitions and fees. Indeed, the BOR owed the FERPA duty to Sakkarapope—both the withholding records and due process. The Secretary of the U.S. Department of Education ("Secretary") owed Sakkarapope's the due process of law to enforce FERPA as prescribed in 20 U.S.C. §1232; 34 CFR 99.

The state statutes of WSU have consented to comply with federal requirements when receiving federal funds, e.g., RCW 28B.30.210 through 285*. With regard to a FERPA

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* RCW 28B.30.210Acceptance of federal aid -- 1907 c 198 -- Assent. The state of Washington hereby assents to the purposes, terms, provisions and conditions of the grant of money provided in an act of congress approved March 16, 1906, said act being entitled "An Act to provide for

compliance duty, the BOR does NOT perform a discretionary function of the state entity, but an administrative one. The BOR is authorized to enter a contract and accept grants. RCW 28B.30.150. (Addendum 16-7) The BOR misled this court again by pretending not to know the term, "discretionary function," exists in the state statute. (BOR Br. 10) An appointed member of the governing body—the BOR is immune from civil liability for any discretionary decision or failure to make a discretionary decision, but liability remain on the agency. RCW 4.24.470. (Addendum 26). It is obvious that when the BOR fails to perform the FERPA compliance duty, administrative function, all ten members of the BOR are not immune from civil liability even in the state forum.

The argument that Sakkarapope did not cite authority is without merit since his argument appears meritorious on its

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an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof," and having for its purpose the more complete endowment and maintenance of agricultural experiment stations theretofore or thereafter established under an act of congress approved March 2, 1887. [1969 ex.s. c 223 § 28B.30.210. Prior: 1907 c 198 § 1; RRS § 4585. Formerly RCW 28.80.190.]

RCW 28B.30.215 Acceptance of certain federal aid.
Said annual sum appropriated and granted to the state of Washington in pursuance of said act of congress approved March 16, 1906, shall be paid as therein provided to the treasurer or other officer duly appointed by the board of regents of Washington State University at Pullman, Washington; and the board of regents of such university are hereby required to report thereon as the secretary of agriculture may prescribe. [1977 c 75 § 22; 1969 ex.s. c 223 § 28B.30.215. Prior: 1907 c 198 § 2; RRS § 4586. Formerly RCW 28.80.200.]

RCW 28B.30.220 Acceptance of federal aid -- 1925 ex.s. c 182.
The assent of the legislature of the state of Washington to the provisions of the act of congress approved February 24, 1925, entitled "An Act to authorize the more complete endowment of agricultural experiment stations and for other purposes," is hereby given. [1969 ex.s. c 223 § 28B.30.220. Prior: 1925 ex.s. c 182 § 1. Formerly RCW 28.80.205; 28.80.190, part.]

face, not be required to provide any case authority. *MYERS v. HARTER,* 76 Wn.2d 772, 782, 459 P.2d 25 (1969); *BROWN v. QUICK MIX CO.,* 75 Wn.2d 833, 836, 454 P.2d 205 (1969); *STATE v. ROBINSON,* 75 Wn.2d 230, 234, 450 P.2d 180 (1969). *SEATTLE SCHOOL DIST. v. STATE,* 90 Wn.2d 476, 585 P.2d 71 (1978). Also, the willful failure to perform duty upon the BOR constitutes a misconduct. RCW 42.20.100; RCW 9A.80.100.

In addition, the BOR refers to a collective action of the ten individual regents by the state statute, RCW 28.30.100, then it does not need to make such a name list. A suit against a group of ten persons is obviously not a suit against the state. Like a suit against an attorney general is not a suit against the state, the representation by the State's Attorney and a suit against the BOR do not constitute a suit against the State. *Smyth v. Ames,* 169 U.S. 466 (1898); *Idaho v. Coeur D'Alene Tribe of Idaho,* 117 S.Ct. 2028, 138 L.Ed.2d 438(1997).

The citation to RCW 28B.10.844* and RCW 4.92 does not obviously support the BOR's positions, but it simply affirms that the state is waived its sovereign immunity in the state forum. (RCW 4.92.090) The BOR did not inform this court that the liability account is "a nonappropriated account to be used solely and exclusively for the payment of liability

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* RCW 28B.10.844 (Regents, trustees, officers, employees or agents of institutions of higher education or educational boards, insurance to protect and hold personally harmless) The board of regents and the board of trustees of each of the state's institutions of higher education and governing body of an educational board are authorized to purchase insurance to protect and hold personally harmless any regent, trustee, officer, employee or agent of their respective institution, any member of an educational board, its officers, employees or agents, from any action, claim or proceeding instituted against him arising out of the performance or failure of performance of duties for or employment with such institution or educational board and to hold him harmless from any expenses connected with the defense, settlement or monetary judgments from such actions. [1972 ex.s. c 23 § 3.]
NOTES: Liability coverage of university personnel and students: RCW 28B.20.250 through 28B.20.255.

settlement and judgment against the state under 42. U.S.C. Sec. 1981 et seq. or for the tortuous conducts of its officers, employees and volunteers and all related legal defense costs." (RCW 4.92.130). (Addendum 19-26) Indeed, the money award is available for a suit §1983 and it does not affect any normal course of WSU's functions from a judgment against the BOR. The *Doe*'s factor test failed.

The state clearly defines the term, "person," in the statute of RCW 1.16.080 that it includes the United States, the State of Washington, or any state or corporation as well as an individual. (*See also*, RCW 1.16.065, RCW 42.30.020, RCW 42.17.010, 020(3); RCW 42.52.010) (Addendum 28-33) Therefore, the BOR is a person in the meaning of 42 U.S.C. §1983. The entirety of the BOR's arguments is fundamentally flaw and not grounded on the state existing statues, but based on a misperception and erroneously interpretation of law. Sakkarapope's argument, in fact, appears meritorious on its face, no need citation of authority.

Another issue remains, given that the state does not waive its sovereign immunity, whether the state is immune from a suit in a federal forum where the state expressly waived its immunity by the state's statutes to be sued in the state forum and a condition the statute of RCW 4.92.010 is invalid, then suable in a federal court. (Addendum 19)

The citation to RCW 28B.10.022 is misleading the court because it was out of the context in the instant case. (BOR's Brief ("BOR Br.") 8) While receiving a federal aid through the Secretary's administration, the BOR agreed to the conditions of FERPA compliance. Indeed, the BOR has consented to such conditions; such action has divested its immunity as an arm of the state.

Moreover, property interests for federal due process purposes are not created by the United States Constitution, but instead stem from independent sources such as state law. *CLEVELAND BD. OF EDUC. v. LOUDERMILL*, 470 U.S. 532, 538, 84 L. Ed. 2d 494, 105 S. Ct. 1487 (1985). Where the federal statute does not authorize a FERPA administrative

complaint procedure in any state function, but solely rests within the Secretary. Where such administrative remedy and enforcement is not sufficient, Sakkarapope's right to sue the BOR has been discriminated by the provision of RCW 4.92.010. Such condition violates the equal protection clause of the fourteenth amendment to the United States Constitution which forbids a state from denying any persons within its jurisdiction the equal protection of its laws. Further, article 1, section 12 of the Washington Constitution provides:

> "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

Like *Hunter*, the state Supreme Court held RCW 4.96.020, which required that claims against certain political subdivisions for damages arising out of tortious conduct be filed within 120 days from the date of the claim, violated the equal protection clause of the Fourteenth Amendment. Referring to the unequivocal waiver of sovereign immunity (RCW 4.92.090), the court held:

> " Any policy of placing roadblocks in the way of potential claimants against the state having been abandoned, we cannot uphold nonclaim statutes simply because they serve to protect the public treasury. Absent that justification, there is no basis, substantial or even rational, on which their discrimination between governmental plaintiffs and others can be supported. They thus cannot stand under the equal protection clause of the Fourteenth Amendment or Const. art. 1, 12. We follow a growing number of courts in holding that the arbitrary burden placed on state claimants by this type of statute cannot withstand constitutional scrutiny. (Footnotes and citations omitted.) *HUNTER v. NORTH MASON*

HIGH SCHOOL & SCHOOL DIST. 403, 85 Wn.2d 810, 539 P.2d 845 (1975) at 818-19. SEE ALSO *JENKINS v. STATE,* 85 Wn.2d 883, 540 P.2d 1363 (1975) (invalidated the nonclaim statute for actions against the state).

Such provision RCW 4.92.010 is invalid. Thus, this court should declare the provision of RCW 4.92.010 is invalid where the Secretary fails to enforce FERPA compliance. The remainings of the statute are still applicable. Therefore, the sovereign immunity under the Eleventh Amendment does not bar Sakkarapope's Complaint in the federal forum. The doctrine of Full faith and credit does not require a forum state to respect another state's rule on sovereign immunity unless the other state's ability to govern would be threatened. *NEVADA v. HALL*, 440 U.S. 410, 424 n.24, 59 L. Ed. 2d 416, 99 S. Ct. 1182, REH'G DENIED, 441 U.S. 917 (1979).

The Washington Legislature waived sovereign immunity to discourage tortious governmental conduct, and to hold government responsible for its acts. RCW 4.92.006 (Addendum 19); *HABERMAN v. WPPSS*, 109 Wn.2d 107, 744 P.2d 1032, 750 P.2d 254. Where the ongoing of violation of the federal statute is endless, this court should have a serious and real concern with the public interest at large at risk. There is no other mean to end such violation, but by no action in this court, it will diminish the purpose of the FERPA.

2. Collateral Estoppel/Res Judicata Doctrine

The BOR's arguments on FERPA based on *Gonzaga* and Taylor are fundamentally out of the context of the instant case. (*See* Reply to the Secretary above). The argument that Sakkarapope would be required to seek a review in the state trial court under the state APA is fundamentally flaw and made without merit. The BOR's arguments, interpretation and application of FERPA's administrative complaint procedure are flip-flopped and inconsistent with its own

actions. After the SRC's decision of April 5, 2002, the BOR notified Sakkarapope of right to file a complaint with the FPCO by its letter dated July 19, 2002. Sakkarapope did so. (Excerpt 160-8) Then, it made a false, invalid suggestion Sakkarapope to challenge its decision of November 6, 2002 in the state court. (Appt. Sup. Excerpt 226 (*see also* at 57-118); BOR Sup. Excerpt #2 and #4).

Despite of such flip-flopped, the BOR's interpretation and application of FERPA's administrative complaint procedure are fundamentally made in obvious error. Sakkarapope did not, and has no obligation to, follow such unauthorized procedure by FERPA. The state agency does not have authority to divert the Secretary's jurisdiction, but it has duty to comply with the procedures the Secretary has established and the advices given to the institution. Where the state APA is in conflict with a federal statute, it is inoperative. RCW 34.05.040. (Addendum 8)

The facts in the records show that the BOR not only refused Sakkarapope's right to inspect and review, and destroyed his educational records (Appt. Sup. Excerpt Vol. I 95; also, 80-259), but it also abused of process to obtain a trial court order of January 16, 2004 to quash Sakkarapope's subpoenas of his educational records where the BOR does not have a right to file a motion to quash (Appt. Supp. Excerpt Vol. II 337-43, 383-469) despite of that the FPCO already provided a clear assistance on this issue (Addendum 67-76). However, the issue of a trial court order of January 16, 2004 has been pending for review a motion for discretionary review by the state appellate court*. (Appt. Sup. Excerpt Vol. II 289-336)

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* It is noted here again that Sakkarapope did not have any intention to bring the subject matter in the Petition for Review under the RCW 34.05 in the state court to be re-litigate in any federal courts, but Sakkarapope preserves his defense right to bring any documents in the state court against the BOR's introduction of such partial, false, misleading and/or prejudicial material evidence to support its positions.

Moreover, the SRC did not practically exist, but only in the name in WAC 504-21-040 prior to Sakkarapope's complaint was filed. The SRC, in fact, does not have authority to conduct a hearing on FERPA complaint, but such authority was delegated to the committee, "Registration and Records Committee," as published in the University's Committee Manual. (Addendum 77). The SRC chaired by Backes was just an ad-hoc committee arbitrarily pretending to fulfill its FERPA duty. However, the SRC violated Sakkarapope's right at the hearing (34 C.F.R 99.22). (Addendum 58-9; Appt. Sup. Excerpt Vol. I 57-259; Excerpt 1-17)

The state Supreme Court has held that statutory tort claim rights under Washington law are not vested absent a final, unreviewable judgment. *SEATTLE RENDERING WORKS, INC. v. DARLING-DELAWARE CO.*, 104 Wn.2d 15, 19, 701 P.2d 502 (1985); *JOHNSON v. CONTINENTAL WEST, INC.*, 99 Wn.2d 555, 563, 663 P.2d 482 (1983); *HADDENHAM v. STATE*, 87 Wn.2d 145, 149-50, 550 P.2d 9 (1976); *SPARKMAN & MCLEAN CO. v. GOVAN INV. TRUST*, 78 Wn.2d 584, 587, 478 P.2d 232 (1970). Exhaustion of administrative remedies is generally not required under § 1983. *Patsy v. Board of Regents*, 457 U.S. 496, 516, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1982). There is no requirement that a plaintiff exhaust administrative remedies in such a suit. *Williamson*, 473 U.S. at 192 (citing Patsy v. Board of Regents, 457 U.S. 496, 73 L. Ed. 2d 172, 102 S. Ct. 2557 (1982)).

Such argument that the exhaustion doctrine barred Plaintiff's claim (Excerpt 96-7) was without merit. A judicial review in the state court is not avenue for FERPA compliance issue. Such exhaustion is not required on Section 1983 suits. *Patsy v. Board of Regents of the state of Florida*, 457 U.S. 496 (1982); *Burnett v. Grattan*, 468 U.S. 42 (1984). The "Res judicata does not bar claims which arise out of a transaction separate and apart from the issue previously litigated." *Schoeman v. New York Life Ins. Co.*, 106 Wn.2d

855, 860, 726 P.2d 1 (1986) (citing *Seattle-First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 226, 588 P.2d 725 (1978)). (BOA at 23-5)

The collateral estoppel doctrine does not apply to Sakkarapope's complaint in the federal court. The test of its applicability failed. (Excerpt 128-47; BOA 19-25) Noting in the Graduate School Policies and Procedures, and the departmental requirement imposed such a program completion deadline. An F-1 I-20 in compliance with the immigration law does not constitute a program completion deadline, or a program extension of the master program.

While Sakkarapope's department and academic advisor did not have any intention to drop him from the program, Grimes abused his discretion. The GSPP already delegated such decision dropping a student from a program to the department and faculty, not the dean. (Addendum 98)

In fact, the state trail court did not conduct a full civil litigation on any issue of the dismissal from the master program in statistics, but dismissed the action on summary judgment. As stated above, the state trial court order of March 5, 2004 was obtained through an unauthorized proceeding in which the state APA does not allow a summary judgment incorporated with it, but a judicial review based on the agency records. RCW 34.05.558, 570 and 590 (Addendum 11-3).

The facts in the records show that Howard Grimes terminated Sakkarapope from the master program was not involved with scholastic standard, but a disputed fact of a completion deadline and Grimes' retaliation. No hearing was afforded. *Brookins v. Bonnell*, 362 F. Supp. 379, 383 (E.D. Pa. 1973). (*See* Excerpt 148-86; Ct. Rec. 30) The records of fact do not support the BOR's argument that the dismissal was made in good faith. (*See also*, BOA 27-8) Such dismissal is subject to a full due process right guaranteed by the constitution.

Therefore, in all dimensions, the applicability test for the doctrine of collateral estoppel failed.

PART D: CONCLUSION

Appellant respectively believes the district court's decision was made in error in application of law, was not substantially supported by material evidence of fact, and substantially violated Sakkarapope's statutory right to fair and full opportunity litigation. The BOR's and the Secretary's arguments are fundamentally flaw, and not based on the undisputed material evidence of facts.

Appellant respectively asks this court reverse and declare the district court mistrial and unconstitutional. It is requested the court for judgment granting relieves as stated.

RESPECTFULLY SUBMITTED this 20th day of January, 2004.

s/ B. Sakkarapope
Appearing Pro Se Appellant

No. 04-35643

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Appellant, V. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATES DEPARTMENT OF EDUCATION, Appellees.	**MOTION TO STRIKE BRIEFS OF APPELLEES**

I. MOTION

COMES now, Mr. BENJAPON SAKKARAPOPE, Appellant, and asks this court to strike out false, misleading, inaccurate or misrepresented and prejudicial statements in the Briefs of Appellees, pursuant to FRAP 27. It is intended that this motion should be determined together with the appeal pending before this court. All citations and supporting evidences are referred to the excerpts of record filed with the Brief of Appellant and Reply Brief. It is noted that objections were made in the Reply Brief of Appellant. It is further requested that this court imposes a proper sanction upon Appellees and the counsels pursuant to Fed. R. Civ. Proc. 11 and FRAP 46.

II. MOTION TO STRIKE THE SECRETARY'S BRIEF OF APPELLEE*

* *See also*, the objection was previously made in Appellant's Reply Brief 4-7.

1. Appellant respectfully asks this court to strike out the statements in the Secretary Brief of Appellee ("Secretary Br.") that:

> This is a civil case...brought suit against Washington State University (hereinafter referred to as "WSU") and the United Stated Department of Education (hereinafter referred to as "DOE") for nonspecific damages result from Plaintiff's disenrollment from a Master's degree program at WSU based upon his failure to complete the requirements of the program in a timely manner. (ER 1-17), specially pg. 16-17, 26). In addition to his allegations against WSU, Plaintiff brought an action against the DOE under the Family Educational Rights and Privacy Act (hereinafter referred to as "FERPA"), alleging DOE failed to properly investigate his complaint against WSU's decisions to disenroll him. (Secretary Br. 2)
>
> ...a former WSU student... (ER 264) While a student in a Masters degree program in 2000, Plaintiff failed to qualify for admission to a Ph.D. program at WSU. (ER 264-5) Subsequently, in February, 2003, Plaintiff was also disenrolled from his Masters program at WSU from failing to complete the requirements in a timely manner. (ER 265) (Secretary Br. 4-5)

BASES:

(A) In the Complaint, Sakkarapope explicitly named two defendants—the BOR and the Secretary, NOT WSU and DOE. The statements misled the court of whom the parties in this suit are.

(B). The statements, "based upon his failure to complete the requirements of the program in a timely manner," is false and misrepresented:

(i) The paragraph 22 of the Complaint explicitly states the bases of the cause of action. (Excerpt 14). Such statement misrepresents the complaint and is not the cause of action against the Secretary.

(ii) The statement was cited from the false statement prepared by the state counsel Gordon in the state trial court order of March 5, 2004, obtained from an unauthorized proceeding (Reply Brief 15-7), and this order has been pending for review. The issue of disputed fact is not yet solved by the state court.

(iii) Nothing in the Graduate School Policies and Procedures ("GSPP") and the Department established a completion deadline of a joint master/doctoral master program, but it was arbitrarily imposed by Howard Grimes who is not authorized to create any new rule, but administer the existing ones. (Appellant's Supplemental Excerpt ("Appt. Sup. Excerpt") Vol. II 484-9, 499-502, 533-4). (Addendum 79-119).

(C). The statement, "alleging the DOE failed to properly investigate his complaint against WSU's decision to disenroll him," is false and misrepresented:

(i) None of the nine separate complaints were filed with Family Policy Compliance Office ("FPCO") imply or suggest such allegation.(Appt. Sup. Excerpt Vol. I 71-134; Excerpt 160-8).

(ii) Nothing in the Complaint filed with the district court states, implies or suggests such allegation. (Excerpt 1-17)

(D) The district court's finding of facts rested on false and misleading material of evidence, and was not sufficiently supported by legitimate material facts of evidence. The state trial court's memorandum opinion was merely an informal expression of the state trial court's view; it does not constitute either findings of fact or conclusions of law. *Raymond W. Clifford et. al v. the State of Washington*, 20 Wn.2d 527. An objection and motion for exclusion was also made before the district court. (*See* Brief of Appellant ("BOA") 20-2) The memorandum should not be cited as a fact or conclusion of law in this court.

(E). The state trial court added the item #6 in the order prepared by the state attorney, authorizing any disputes

must be addressed in the state appellate court. (Excerpt 88) Indeed, the statements in the trial court order are disputed facts pending for the state appellate court to decide. Such citation of the disputed material of facts was prejudicial. It is obvious that the BOR's motion for summary judgment did not meet the standard of Fed. R. Civ. Proc. 56; that was required a trial to solve the disputed material of facts.

(F) The district court stated at the hearing of May 25, 2004, that:

> Well, that's what somebody from the state attorney general's office wrote and the judge signed...No, I'm just saying it's problematic when a lawyer writes out what the Judge is deciding...That's the difficulty I has, Miss Vance, in trying to discern exactly what testimony the state court entertained and what the state court's decision was.... (Excerpt 281-2)

It is obvious that the memorandum opinion and the order of March 5, 2004, are subject to exclusion under Fed. R. Civ. Evid. 403. (BOA 20) This court should not maintain such statements on this appeal.

(G). A Petition for Review of WSU's decisions in regard to the dismissal pursuant to the state Administrative Procedure Act, RCW 34.04 has been pending for review by the state appellate court. Such judicial proceeding is not yet final. The right to appeal of the party is not yet expired.

The GSPP states that "Students who, for any reason, find that they cannot enroll for credit are considered to be on Graduate Leave Status," and that "Students on Graduate Leave Status will be considered by the Gradate School to be in good standing for up to four consecutive years." (Addendum 86).

The Graduate Student Code states a graduate student right that "To be governed by clearly stated and justifiable academic procedures, rules and regulations," and "To be accurately informed of program requirements and expectation upon enrollment." (Addendum 103).

Sakkarapope was disenrolled by Grimes on January 31, 2003 and the dispute of enrollment is ongoing in the state courts and until to date it is less than four years. Mr. Grimes does not have authority to make a rule on his own and imposed upon only Sakkarapope. Such action violated Sakkarapope's graduate student right. Grimes abused his discretion and committed an official misconduct. *State Ex Rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971); RCW 9A.80.010. (Addendum 27)

Therefore, by claiming that Sakkarapope is "a former WSU student" and that he was disenrolled "for failing to complete the requirements in a timely manner" is legal conclusions and prejudicial and false. The claims are not supported by the entire material evidence of the matter, but partial records of claim arbitrarily made by the state officials in bad faith and selectively presented before the court by the bad faith state lawyers.

2. Appellant respectfully submits objection to and asks this court to strike out the statements in the Secretary Brief of Appellee ("Secretary Br.") that "Plaintiff brought suit against Washington State University and the DOE seeking unspecified damage related to his disenrollment from a graduate degree program at WSU,"(Secretary Br. 3) is misleading and prejudicial.

BASES:

The nature of the Compliant alleged the BOR related to the denial of rights to inspect and review of educational records and due process right prescribed by FERPA, and alleged the Secretary violated due process right prescribed by FERPA. The statements in the Complaint page 15-17 are reasonably clear. (Excerpt 15-7)

The Complaint itself did not alleged the Secretary related to the disenrollment for a graduate degree program at WSU, but the failure of the Secretary to enforce the BOR to comply with FERPA-- the denial of rights to inspect and

review of educational records, and due process right as prescribed by FERPA, and the destroying the records.

The consequence of failure to comply with FERPA led to such dismissal/disenrollment which is the real damage that can be assessed monetarily through the action of Section 1983.

The complaint was not brought against either WSU or DOE, but the BOR and the Secretary. Such statement was referred to wrong parties, then, misleading.

The above statements are plainly false, misleading, misrepresented of Sakkarapope's Complaint, and prejudicial. Because the statements were made by the so-called competent lawyer, it is presumptive that the counsel had full intention to mislead this court. The statements are prejudicial on its face and unfair to the opposing party. Appellant respectfully believes the counsel failed to comply with Fed. R. Civ. Proc. 11 and the oath of attorney. Therefore, Appellant respectfully asks this court to strike out the statements in the Secretary Brief.

Consequently, Appellant respectfully believes that the Secretary's arguments therein the Brief was made based on a wrong party, wrong issue and misleading foundation of law as well as the false statements of the case and the facts. The entire arguments were defective and useless. (See Reply Brief 8-15)

Appellant respectfully believes that the Secretary failed to meet its statutory duty to provide direct answers to the issues set forth for appeal. By not providing a direct answer to the BOA, it is equivalent to that the Secretary has no arguments.

The cited legal foundation of *Gonzaga* and *Taylor*, is misplaced, misleading and out of the context of the allegation against the Secretary. Both cases were the cases against educational institutions alleging they violated FERPA §1232g(a) or (b), not the case against the Secretary's failure to enforce FERPA §1232g(f) and (g), and violation of due process right guaranteed by the Fourteen Amendment. These

two legal inquiries are not identical. Nothing in *Gonzaga* discuss about the Secretary's failure to enforce FERPA §1232g(f) and (g), and violation of due process right guaranteed by the Fourteen Amendment.

The Secretary also cited a footnote as a legal authority which is not proper. If it wanted to call for the court's attention, it shall be placed in the footnote as it was belong to. By citing a footnote in the text of the Brief, it is improper, misleading and prejudicial.

Therefore, Appellant respectfully asks this court strikes out the entirety of the Secretary's Brief as to the bases stated herein. Appellant respectfully believes such brief is defective and fundamentally flaw in legal bases. Such brief is prejudicial to the opposing party. It is further requested that this court impose a proper sanction upon the Secretary and counsel pursuant to Fed. R. Civ. Proc. 11 and FRAP 46 to prevent a miscarriage of justice. This court should not allow such a professional creates an unfair proceeding against a pro se in this court. A pro se who does not have a legal trained should be protected against any prejudice and injustice movement by the professional.

III. MOTION TO STRIKE THE BOARD OF REGENTS' BRIEF OF APPELLEE[*]

Appellant respectfully asks this court to strike out the entirety of the BOR's statement of the case.

In addition to the bases stated in paragraph II above, the entirety is fundamentally false and misleading. The following bases will be addressed to specific statements:

(A). The contents were rested on the state trial court's order of March 5, 2004 and its memorandum opinion which substantially contains false, inaccurate, misleading and/or disputed facts. The statements of facts and conclusions of laws prepared by the state lawyer and signed by the state trial

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[*] *See also*, the objection was previously made in Appellant's Reply Brief 15-7.

court judge are not sufficiently supported by material evidence of facts in the records*.

(B). The objections to the admission of the state trial court's order of March 5, 2004 and its memorandum opinion were made. Judicial review of disputed issues of fact shall be

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* The state trial court clearly stated at the hearing on the Motion for Summary Judgment, February 6, 2004, prior to the memorandum opinion was issued February 17, 2004, that:

> ....particularly **challenge whether it is a complete record And there's challenges made as to whether things are missing, and there's challenges that decisions were made on things, on bases that are not within the record, I'm probably going to be very reluctant,** here, on summary judgment, today, to rule rule in favor of the University on that particular issue. Because I think the fact that I mean, I just feel off-hand the fact that **there is a challenge to the completeness of the record and there's documentation, or at least argument, with respect to that particular issue, I think that raises a genuine issue of fact** as to whether everything is there that relates to due process, and whether decisions were made in an arbitrary and capricious fashion, and other issues that **relate to the merits of the case.** So I think I'm going to be reluctant at this stage to make a final ruling of summary judgment on that ground, just on the basis that I think the arguments that I've been hearing, here, **regarding discovery and incompleteness of the record** going to have to decide an administrative appeal on the record, and we're getting to the merits, **I think that probably a genuine issue of material fact....I think that there is extreme merit,** ....
>
> **While there are issues being raised here as far as the completeness of the record, and while I think because of that I'm going to be reluctant to decide in summary judgment the merits of the case,** .....with respect to a couple of those issues **I I see a lot of merit.** ... --the bottom line, here, **I see a lot of merit to those issues.** I've got some reluctance on the getting into the merits....because there is this dispute on what the record is, I think I'm probably probably going to be reluctant to feel that I can make decisions as a matter of law on the merits of the case. But And on I'm going to have to take a very close at These are complicated issues. And I don't want (inaudible); it's obviously important to everybody concerned here. (Report of Proceeding ("RP") 69-76) [Emphasis added]

conducted by the court confined to the agency record for review. RCW 34.05.558. The issues of disputed facts are pending before the state appellate court to decide. (*See* also, Part B.I above; App. Sup. Excerpt 289-336, 473-558, Excerpt 114-23, 169-86; 281-3).

The state trial court's order of March 5, 2004 and its memorandum opinion were obtained through an unauthorized proceeding of summary judgment of February 6, 2004. The state Administrative Procedure Act does not allow summary judgment proceeding to be incorporated within the APA. RCW 34.05.590. *Eastlake Community Council v. City of Seattle,* 64 Wn. App. 273, 276, 823 P.2d 1132 (1992); *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.,* 102 Wn. App.1, 14, 979 P.2d 929 (1999). Such order is unconstitutional.

The citation into the disputed facts is prejudicial. Despite of all BOR's arguments, the trial court's order of March 5, 2004 was useless. This court should strike out of all implication or induction arise from such unlawful order. (*See* Reply Brief 15-7)

(C) Sakkarapope in fact is not a doctoral student in Agricultural Economics, but IIDP. (BOA 6). While WSU has not yet provided any material evidence showing Sakkarapope actually failed the 2000 IIDP preliminary examination, the statement stating he failed the preliminary qualifying exam" is prejudicial and not supported by material evidence in the records, but the statement of claim made by the state officials. WSU has not yet disclosed the examination and that is why Sakkarapope appeared in this court. (BOA 7-8)

(D) Sakkarapope did not file a judicial review of FERPA compliance in the state court, but a procedural review of the brief adjudicative proceeding whether Provost Bate and the SRC fulfilled the requirements. The two have different legal inquiries. The BOR misrepresented the Petition for Review; it has no right to divert Sakkarapope's petition. However, the disputing portion was withdrawn from

the state court and the Motion for Supplemental Jurisdiction was filed with the district court. The state court lost its jurisdiction on the dispute.

(E) The claimed statement that Grimes "honestly, in good faith and in accordance with WSU policy determined that Sakkarapope was unlikely to complete the Master's Program," is false and not sufficiently supported by material facts, but solely a statement of claim made by the bad-faith state lawyer, signed by the trial court judge. The statements was based on the Memorandum in Support of Respondents' Motion for Summary Judgment falsely and misleadingly prepared by the state lawyer. Such statements were objected by Sakkarapope in the state trial court (Appt. Sup. Excerpt Vol. I 260-86; Vol II 473-546)

The statement itself shows the Grimes' decision was made based on his belief and speculation. None of the WSU records show that Sakkarapope's department and academic advisor ever made any recommendation or suggestion to drop him from the program. Sakkarapope did not receive any unsatisfactory result of annual academic performance evaluation as required by the GSPP. (Addendum 98) None of unsatisfactory result of such annual review ever appeared in the University's records. Indeed, Grimes' conduct was in retaliation. (*See also*, Reply Brief 27-8) The statement has no merit.

(F) The statement, "Sakkarapope neglected to seek timely administrative review of that decision in state superior court," (BOR Br. 3) was prejudicial and legal conclusion. The state court does not have jurisdiction over FERPA compliance. §1232g(f) and (g). It is also contradictory to its own action of notifying Sakakrapope to file a FERPA complaint with the FPCO. (*See* Reply Brief 26-9).

Appellant respectfully believes the entirety of the BOR's statement of the case was rested on the state trial court's order of March 5, 2004 and its memorandum opinion which substantially contains false, inaccurate, misleading and/or disputed facts prepared by the state lawyer and signed

by the state trial court judge are not sufficiently supported by material evidence of facts in the records. The statements are extremely controversial and ongoing of judicial review under the state APA in the state court. Such disputed facts should be subject to exclusion from any proceeding in this court.

Therefore, Appellant respectfully believes the entirety is fundamentally false and misleading and prejudicial. This court should strike out in the entirety.

Consequently, Appellant respectfully believes that the BOR's arguments therein the Brief were made based on the false, misleading and prejudicial statements of the case and the facts. The arguments rested on such basis were defective and useless. Therefore, Appellant respectfully asks this court to strike out those arguments rested on the Statement of the Case.

In addition, the state lawyer took the oath when entering its bar membership:

I do solemnly declare:

1. I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same.

3. I will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington.

4. I will maintain the respect due to the courts of justice and judicial officers.

5. I will not counsel, or maintain any suit, or proceeding, which shall appear to me to be unjust, or any defense except as I believe to be honestly debatable under the law, unless it is in defense of a person charged with a public offense. I will employ for the purpose of maintaining the causes confided to me only those means consistent with truth and honor. I will never seek to mislead the judge or jury by any artifice or false statement.

7. I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a

party or witness unless required by the justice of the cause with which I am charged.
8. I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person.
(WSBA-APR 5)

Appellant respectfully believes these state lawyers have violated the oath of attorney by presenting false, misleading and disputed statements of facts prejudicial to the opposing party. Such conduct is unjust to the opposing party and lead to a miscarriage of justice. This court should take such circumstance into its consideration to impose a proper sanction upon the appellees and the counsel.

IV. CONCLUSION AND RELIEF REQUESTED

Based on the facts and bases above, Appellant respectfully believes the entirety of the BOR's statement of the case was rested on the state trial court's order of March 5, 2004 and its memorandum opinion which were obtained from an unauthorized proceedings and based on false, inaccurate, misleading and/or disputed facts prepared by the state lawyer and signed by the state trial court judge are not sufficiently supported by material evidence of facts in the records. The statements are extremely prejudicial and unjust.

Appellant respectfully believes the Secretary's Brief is defective and fundamentally flaw. Such brief is prejudicial to the opposing party.

Therefore, Appellant respectfully asks this court strikes out the improper statements in the briefs of appellees as requested.

It is further requested that this court impose a proper sanction upon the Appellees and counsels pursuant to Fed. R. Civ. Proc. 11 and FRAP 46 to prevent a miscarriage of justice. This court should not allow such a professional creates an unfair proceeding against a pro se in this court. A

pro se's right should be protected against any prejudice and injustice movement by the professional.

RESPECTFULLY SUBMITTED this 24th day of January, 2005.

s/ B. Sakkarapope
Appearing Pro Se Appellant

FILED
JUL 23 2003
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE,	)	
	)	
Petitioner	)	Case No. 03-2-00168-4
v.	)	
	)	PETITION FOR REVIEW
STATE OF WASHINTON,	)	
THE BOARD OF REGENTS,	)	FILING FEE: $110.00
WASHINGON STATE)		(RCW 36.18.020(2)(c))
UNIVERSITY	)	
	)	
Respondent.	)	
	)	

1. The Petitioner, Mr. Benjapon Sakkarapope, whose mailing address is 430 NE Oak Street, Apartment 2, petitions for review pursuant to RCW 34.05.510 et. seq., and RCW 42.17.340, of administrative agency decisions and actions.

2. The decisions and actions are from Washington State University (WSU). Their address is: The Office of the Board of Regents, French Administration Building, Room 422, Stadium Way, P.O. Box 641048, Pullman, WA 99164-1048.

3. At issues are the decisions and actions of the Board of Regents, Washington State University, as briefly listed in Attachment I and related decisions and actions, in regard to the Petitioner on the following:

A. The agency's denials of public records disclosure are listed in Attachment III. The reviews of agency's denials of public records pursuant to RCW 42.17.325, are listed in Attachment IV.

B. The decisions and actions of the brief adjudicative proceeding of March 27, 2002, pursuant to WAC 504-21-040, WAC 504-04-010, RCW 34.05.482 through 34.05.491, (Attachment II). The decision of April 5, 2002, was made by the Student's Record Committee, chaired by Mr. Richard Backes; and the decision of November 6, 2002, made by Provost Robert Bates.

After unsuccessful of obtaining explanation and clarification of the decision of April 5, 2002, the Petitioner appealed the decision before the Provost on September 23, 2002; the appeal was denied on November 6, 2002. The President and the Board of Regents were deemed to have denied the subsequent appeals before them.

C. The decisions and actions of denial an application for adjudicative proceeding dated February 23, 2003, and of denial access to the Board on January 24, 2003, made by the University--WSU Board of Regents, President Joe King, and the University President (see Attachment I).

D. The decisions and actions in regard to the preliminary examination ended on February 11, 2000, in fulfilling the requirement of the IIDP, made by Dr. Kenneth Duft and the examination/advisory committee (see Attachment I). The decisions and actions include the decisions of the evaluation of the written preliminary examinations dated January 12 and 14, and the oral examination dated February 11, 2000. Both written and oral examinations constitute one preliminary examination.

E. The decisions and actions under the adjudication of the Graduate Student Code, made by Dr. Howard Grimes and the CGSRR (September 1, 2000), Drs. Karen DePauw, Herbert Hill, Ronald Hopkins, and Robert Bates (see Attachment I).

F. The decisions and actions made by Dr. Howard Grimes since November 2002. The Petitioner had filed several appeals from December, 2002, to February 6, 2003. Dr. Howard Grimes provided no response.

After unsuccessful of solving the matter with Dr. Grimes, the subsequent appeals before the Provost, WSU President and the Board of Regents were filed; the University provided no response. The appeals were deemed to have been denied (Attachment I).

4. The parties in the decisions were Petitioner herein and the Board of Regents, Washington State University, by:

(a) Individual Regents

(b) WSU President (Dr. V. Lane Rawlins)

(c) Provost (Dr. Robert Bates) and Interim Provost (Dr. Ronald Hopkins)

(d) Drs. Karen DePauw (former Dean, the Graduate School) and Herbert Hills (former Associate Dean, the Graduate School)

(e) The Committee on Graduate Student Rights and Responsibilities (CGSRR)—Drs. Howard Grimes (Dean, the Graduate School), Sally Blank, and James Harsh.

(f) The Student Records Committee (SRC)—Mr. Richard Backes, Mr. Barry Johnston, Dr. William Cofer, and Ms. Helen Tupai.

(g) The advisory/preliminary examination committee—Drs. Kenneth Duft, Phillip Wandschneider, Hong Holly Wang, Frederick Inaba, Li-Ming Han (John Kling), and Hao Zhang. The Graduate School Representative: Dr. R. Allan Black.

(h) Public Records Officers: Mss. Lori Lamb and Kirsten Pauli

5. The Petitioner is entitled to obtain judicial reviews because of the following facts:

A. Under RCW 42.17.250 through 42.17.320, the Petitioner had made requests for agency's records of the preliminary examination of February 11, 2000, the appeals of the examination under the Graduate Student Code, the brief adjudicative proceeding, and related documents since May 23, 2002:

(1) The list of the requests for records is shown in Attachment III. Attachment III also briefly states facts of the

agency's actions and the actions the Petitioner had taken. See also, Attachment VI for correspondences.

(2) Attachment X demonstrates the lists of records released by the agency, but only small portion of them are the requested records.

(3) Attachment IX briefly summarizes the scope of the requested records, the requested records actually received, and the records to which the agency still has not provided full disclosure in compliance with the Public Records Act.

(4) Based on the facts in the best knowledge of the Petitioner could possibly have, and the facts of how the agency released the records over previous years, the petitioner strongly believes the agency has intentionally denied an opportunity to inspect and copy public records. Attachment IX significantly demonstrates that the released records were incomplete. The agency has taken time to disclosing the requested records over two years.

(5) The agency has not sufficiently, explicitly informed the Petitioner of reasonable circumstances, and the status of the requested records. Where the agency indicated a record did not exist, the record was still released afterward. The Petitioner has a reasonable doubt in the agency's professional creditability in this regard.

(6) The agency indicated exemption claims in the item #4 of the request dated May 23, 2002, and the item #17 of the request dated May 31, 2002. The denials were reviewed by the Attorney General pursuant to RCW 42.17.325. The reviews were issued on October 8, 2002, and February 3, 2003. See Attachment IV and VIII.

(7) Where the review of October 8, 2002, made by Senior Counsel Meredith Wright Morton, indicated that "no public record exist," Senior Assistant Attorney General Antoinette M. Ursich did provide the list of the records withheld under the exemption claims on September 30, 2002. The agency entered an exemption claim to withhold the records; this was the reason for the request for review. Ms.

Pauli informed the Petitioner that all documents were sent off to the Office of Attorney General for review. The review of February 3, 2003, made by AGG Nancy J. Krier, still did not clearly provide reasonable evidences and circumstances and facts to justifying the denials with respect to the issues raised by the Petitioner. Therefore, the Petitioner has a reasonable doubt in those reviews.

B. The decision of April 5, 2002, was from the brief adjudicative proceeding:

(1) The Student Records Committee (SRC) did not exist at the time the Petitioner filed a request for the hearing. The University's functions regarding FERPA were delegated to the standing committee, "Registration and Records Committee." The University provided the Petitioner with no evidence of its termination prior to the time the petition was filed.

(2) Mr. Richard Backes had an interest in the outcome of the hearing; he was not eligible to conduct a hearing in accordance with 34 CFR 99. See also Dr. DePauw's email dated 3/5/02 to Ms. Linda Infranco, and Mr. Backes' email dated March 20, 2002, to Dr. DePauw.

(3) The conduct of hearing did not meet the requirements for conducting a hearing in compliance with 34 CFR 99. See the letter dated September 23, 2002.

(4) The Petitioner's right to have an advocate or attorney to represent him at the hearing was denied.

(5) The SRC never informed the Petitioner of what procedures they had pursued and what evidences they have obtained in their deliberation and rendering the decision of April 5, 2002. None of documentation under their proceedings disclosed, provided constructive facts supporting the decision.

(6) The Student Records Committee (SRC)'s decision of April 5, 2002, "the University has fully complied with your request for the release of education records under FERPA," was not support by the facts. After April 5, 2002,

the agency still released some additional requested records and of which the SRC indicated it did not exist.

(7) The agency's decision of November 6, 2002, made by Provost Robert Bates, "You have no additional rights to appeal this decision within Washington State University," was not supported by the facts:

(a) "The Provost and Academic Vice President is directly responsible to the President and serves in the chief executive officer's stead as requested."

(b) "The President administers the policies approved by the Board of Regents" and has other functions as indicated in the Faculty Manual.

(c) "Any University committee or individual shall be accorded the opportunity to present a direct appeal to the Board of Regents through this channel."

(d) The Graduate Student Code grants a graduate student's right that "To be governed by clearly stated and justifiable academic procedures, rules, and regulations."

(8) The agency's decision of November 6, 2002, made by Provost Robert Bates, "You may, within thirty days of the date your receive this letter, appeal this decision to the Whitman County Superior Court in accordance with RCW34.05.514 and 34.05.542, " was misleading and inaccurate.

C. The application for adjudicative proceeding dated February 23, 2003, was deemed to have been denied. The agency provided no response within the 90 days. The denial access to the Board on January 24, 2003, was verbally made by the University--WSU Board of Regents, President Joe King, and the University President, in consultation with the Office of Attorney General while the Petitioner presented at the meeting with full intention and interest to address the matters before the Board.

D. The decisions and actions in regard to the preliminary examination ended on February 11, 2000, in fulfilling the requirement of the IIDP, made by Dr. Kenneth

Duft and the examination/advisory committee (see Attachment I):

(1) The decisions and actions include the decisions of the evaluation of the written preliminary examinations dated January 12 and 14, and the oral examination dated February 11, 2000. Both written and oral examinations constituted one preliminary examination where it is different from the other doctoral program requirement.

(2) Dr. Kenneth Duft and the examination/advisory committee failed to properly comply with the established procedures in the IIDP Faculty/Student Handbook, and with respect to the student's program of study approved by the Graduate Studies Committee, as well as the right of the student.

(3) Dr. Duft and the committee predisposed the preliminary examination prior the preliminary examination procedure was completed. After discovering that the committee was not able to do so with respect to the requirement of the IIDP, the oral examination was simply scheduled to fulfill its official obligation and prejudgment.

(4) Dr. Duft not only refused to reconvene a committee's meeting to consider the Petitioner's request dated January 31, 2000, for solving the discrepancies in the written examination process prior to the scheduling for the oral examination, but also advised the Petitioner to challenge the decision before the Graduate School. The oral examination was conducted without a proper solution to the discrepancies of the written examination portions.

(5) Dr. Kenneth Duft provided misleading and representation information responsive to Dr. Herbert Hill email dated 5/5/00, as indicated in the Petitioner's correspondences.

(6) Dr. Duft and individual committee members excused themselves from discussing the results of the examinations with the student, and withheld the student's education and public records in regard to the examination.

E. The decisions and actions under the adjudication of the Graduate Student Code, made by Dr. Howard Grimes and the CGSRR (September 1, 2000), Drs. Karen DePauw, Herbert Hill, Ronald Hopkins, and Robert Bates:

(1) President King reaffirmed that the University's academic decisions cannot be changed regardless of what records would come out. This included the academic decisions made by Dr. Howard Grimes, the CGSRR, Dr. Karen DePauw and Dr. Herbert Hill without academic expertise in the academic areas underlying the academic disciplines of the student's program of study approved by the University.

(2) Dr. Karen DePauw as the Program chair excused herself from reviewing the examination and advised the student to pursue the Graduate School's appeal process in order to be fair for everyone involved.

(3) Dr. Herbert Hill, Associate Dean, made an academic review of the examination and rendered the Graduate School's decisions of May 19 and June 9, 2000, by himself while he was not authorized to make such academic review and decision under the Graduate Student Code.

(4) Dr. Herbert Hill's reviews were not with proper understanding of the IIDP handbook and the student's program of study.

(5) Dr. Hill is a faculty member in Chemistry and has no expertise in the student's academic areas of study, but made the academic decision in regard to the student's academic performance.

(6) Dr. Herbert Hill made the decisions of May 19 and June 9, 2000, with incomplete information and inaccurate understanding of the matter:

(a) Dr. Hill received a response to his email inquiry dated 5/5/00 from Dr. Li-Ming Han on June 15, 2000, and no response from Dr. Hao Zhang, but already made the decision of May 19, 2000.

(b) Dr. Allan Black is a faculty in the School of Biological Sciences and was a Graduate School's

representative. Dr. Black does not have expertise in the student's academic areas, but provide academic opinion responsive to the Dr. Hill's email dated 5/5/00 as part of Dr. Hill's decisions.

(7) On April 26, 2000, Dr. Karen DePauw dropped the student from Washington State University with a claim that the Petitioner had failed the second preliminary examination. Dr. Karen DePauw also provided a correction with unpublished rules and policies. In fact, the disputed preliminary examination was the only and the first examination the Petitioner took. With a student's written objection, the Petitioner's student status in the IIDP has been pending the result of the appeal process as indicated in the letter dated May 4, 2000. Dr. Karen DePauw provided no further explanation and clarification in this regard.

(8) Dr. Howard Grimes, Dr. Blank, and Dr. Harsh have expertise in Molecular Biosciences--Biochemistry, Kinesiology—Muscle Physiology/Exercise Biochemistry, and Crop and Soil Sciences--Soil Chemistry, respectively. They do not have expertise in the student's academic areas of study, but made an academic review and decision of September 19, 2000. Their decisions and reviews were not based on accepted academic and professional norms.

(9) The memorandum of September 19, 2000, contains misleading and misrepresenting information in regard to the Petitioner's academic performance in the program as indicated in his correspondences with the Graduate School.

(10) Dr. Howard Grimes and the CGSRR failed conducted a fair adjudicative proceeding with respect to the student and constitutional rights of the Petitioners:

(a) The CGSRR failed to conduct a formal adjudicative proceeding in compliance with WAC 504-04 and the Administrative Procedure Act. The model rules of procedures, WAC 10-08 represent a fair procedure in conducting a formal adjudicative proceeding.

(b) Dr. Grimes and the CGSRR chose to operate the formal adjudicative proceeding with unpublished procedures. The CGSRR never informed the Petitioner of what procedures they had pursued, what evidences they had obtained, and what academic criteria they adopted in their deliberation and render the recommendation. None of documentation under their proceedings was disclosed. The decision of September 19, 2000, has no effect on the student's status in the program. RCW 42.17.250.

(c) Dr. Karen DePauw as the Dean of the Graduate School made the University' s decisions of October 10, 2000, based on Drs. Hill's, Grimes' and the CGSRR's reviews and decisions in which the reviews and decisions were not made with proper procedures and accepted academic norms. The memorandum of October 10, 2000, also contains misleading and representation information in regard to the matter as indicated in the Petitioner's correspondences.

(d) Dr. Karen DePauw withheld the student's requested records in regard to the preliminary examination and the appeals in violation of state laws and federal regulations.

(e) Dr. Donald Hopkins' claimed decision that "I find no irregularity in the procedures used by the Graduate School. You were afforded due process for this review of an academic decision," was made with no supporting facts and evidence, and did not provide explanation and clarification in regard to his decisions. Also, he did not release any record under his review responsive to the Petitioner's requests.

F. The decisions and actions made by Dr. Howard Grimes from November 2002 to February 2003:

(1) The memorandum of November 25, 2002, misrepresented the Petitioner's student status at WSU. Dr. Howard Grimes, the agency ignored the Petitioner's request and refused to provide explanation and clarification as well as make proper corrections.

(2) Dr. Howard Grimes withheld the Petitioner's enrollment registration for Spring 2003 semester due to "a

Grad School Academic Deficiency," while the Petitioner is not academic deficient according to the University's definition. Dr. Howard Grimes, the agency ignored the Petitioner's requests and refused to provide explanation and clarification in this regard.

(3) On December 18, 2002, Dr. Howard Grimes made an academic judgment in regard to the Petitioner's academic progress and program completion in Statistics Program while:

(a) Dr. Howard Grimes does not have academic expertise in the academic area of his study.

(b) The authority was delegated to the academic department and the student's academic advisor, according to the Graduate School Policies and Procedures.

(c) Neither the Petitioner's academic advisor/department nor the Petitioner did request for any extension of program completion. Dr. Howard Grimes, the agency was deemed to fully acknowledge the Petitioner's written objection and the facts, but provided no response.

(d) Dr. Howard Grimes is not authorized to make any new rule and policy, but effectively administer and enforce the existing University policies and procedures.

(4) Dr. Howard Grimes deliberately took further action and decision of January 31, 2003, to drop the Petitioner from the graduate program at Washington State University and terminate his Spring 2003 semester enrollment while:

(a) The department and the student's academic advisor did not ask him to do so.

(b) The decisions and actions were based on unpublished rules, policies and procedures.

(c) The Petitioner's graduate student status in the IIDP has been pending the further administrative proceeding and judicial review.

6. This Petition for review is timely filed with the proper court. Petitioner has exhausted administrative remedies available and is aggrieved by the final decisions and actions of the agency. Attachments V and VI show a timeline of actions the petitioner has pursued prior to seeking justice before the court.

7. Petitioner is entitled to relief pursuant to RCW 34.05.370 (3) and/or RCW 34.05.370 (4), and RCW 42.17.340(4) because:

A. The facts indicated that the released records were incomplete. In some occasions, where the agency indicated the record does not exist, the agency discovered and disclosed it later. The records of the examination did exist, but the agency chose not to release. The Petitioner believes the time the agency has taken to disclosing the requested records is not reasonable. The creditability of the agency is in question. The Petitioner has a reasonable doubt in the faith and integrity of the agency in compliance with the public record law. The Petitioner has a reasonable doubt of what records were actually created, obtained, and maintained by the agency. A de novo examination and review by the court in each proceeding the agency had conducted is to be the only mean to seek the truth under God in this regard;

B. According to the facts, the Petitioner has a reasonable belief that the brief adjudicative proceeding was not legitimate. The proceedings were conducted in violation of the constitutional and student rights. The agency claim, "the Committee was properly constituted and that it had authority to hear and decide your case," was not supported by the factual evidences the petitioner presented in the letter of September 23, 2002. The agency provided no evidence and analysis to justify whether the Committee fully and properly conducted the hearing as a brief adjudicative proceeding in compliance with RCW 34.05, 34 CFR 99, WAC 504-21 as well as all other applicable laws and regulations;

C. Each member of the WSU Board of Regents was appointed by the Governor with approval of the Senate. Before entering upon his duties, each Regent took and subscribed an oath to discharge faithfully and honestly his duties and to perform strictly and impartially the same to the best of his ability. RCW 28B.10.520. The denial access to the Board on January 24, 2003, demonstrated that the Respondent did not impartially discharge their duties under oaths at the same to the best of their abilities. There was no evidence showing that the Respondent had strictly performed their duties in compliance with the oaths;

D. The facts suggest that the academic decision of February 11, 2000, was not careful and deliberate:

(a) The written examination was not constructed according to the student's approved program of study and the agreed content and format of the preliminary examination as well as the IIDP Faculty/Student Handbook.

(b) The final decision of dismissal the Petitioner was arbitrarily made at the end of the written examination portion in January 2000, where both written and oral examinations constitute one examination, prior to the examination was completed.

(c) The chair of the advisory committee denied a petition for reevaluating the written examination dated January 31, 2000, and chose to conduct the oral examination without a constructive solution to the issues in the written examination the student brought before.

(d) The committee members not only did not properly understand the procedures under the IIDP, but chose to apply the procedures of their own departments.

(e) Dr. Duft's memorandum responsive to Dr. Hill's email dated 5/5/00 contains misleading information about the student and the examination procedures.

To date, the agency released the written examination documentation on the portion the Petitioner received a passing grade, but not the other portions the Petitioner received failing grades. Dr. Duft's email of June 7, 2002,

indicated that he disposed the examination documentation while the requests for the records were outstanding. Thus, the petitioner has a reasonable doubt in the truthfulness, accuracy and integrity of the academic decisions;

E. The facts and evidences suggest that the agency's decisions and actions under the adjudication of rights and responsibilities of the Graduate Student Code, were not careful and deliberate:

(a) The Associate Dean Herbert Hill's decisions of May 19 and June 28, 2000, were made outside his authority and academic, professional expertise. Dr. Hill had erroneously interpreted or applied the IIDP Faculty/Student Handbook with inadequate understanding of the approved program of study.

(b) The CGSRR's decision and action of September 19, 2000, was made outside their academic, professional expertise. The CGSRR did not "operate with due respect to the rights of graduate student and graduate faculty, including the conduct of confidential interviews, the rights of all parties to review and address allegations, and rights to a fair hearing," as described in the Graduate Student Code, page 8-9. The decision of September 19, 2000, also contained misleading and inaccurate information about the Petitioner.

(c) The Graduate School's decision of October 10, 2000, was made based on the decisions and reviews of Dr. Hill and the CGSRR.

(d) The Interim Provost's decision of February 1 and December 13, 2001, was made based on the Graduate School's decision of October 10, 2000, Dr. DePauw's decisions and reviews.

(e) The Provost's decision of November 6, 2002, was made based on the Interim Provost's decision of February 1 and December 13, 2001.

These decisions and actions were made without explicit facts, evidences and rationales. No explanation and clarification was provided by the person who made such decisions and actions. The University President and the

Respondent has ignored the rights of petitions brought before the University;

F. While the Petitioner has exercised his rights to seek all administrative remedies available, Dr. Howard Grimes, who was directly involved with the ongoing dispute matters, took the decisions and actions of November 25 and December 18, 2002, including the withholding the Spring 2003 registration on the METRO, as well as the disenrollment of January 31, 2003. These incidences reflect the agency's retaliation attempt made by Dr. Howard Grimes. This retaliation attempt is also suggested by the subsequent incidences in regard to the temporary employment termination and the student visa status. The agency provided no response to the Petitioner's written appeals;

G. The agency's chief executive officer publicized the principles he believes in at the Fall All-University Address on September 18, 2000:

> (a) "The stakes are high include what I believe to be the heart of the university; the right of the faculty to set the curriculum and decide the course of their research. Like all other rights, this carries with it a considerable responsibility, including a responsibility to justify the process to those who pay for it. Whether the questions are as mundane as the calculus requirement for business majors or as fundamental as why research in medieval literature is important, we must understand that our credibility is in question. We must not squander it by defending the indefensible or that which is only marginally important."
>
> (b) "Let us be up front about our concerns about the education process and try to apply research-based information to improve it. Let us take the position that questioning the importance of our research is legitimate and we are willing to engage in that dialogue. It is time for us to willingly and patiently explain what we do, how and why we do it, and how it is related to the economic, social, and cultural

environment. But it is not time to give in to unreasonable arguments or surrender that which we believe is vital to our mission."

(c) "All the ideas, findings, processes and conclusions are subjected to rigorous questioning and validation and only the best survive. This is a place where notions about the sun orbiting the earth, the divinity of kings, the supremacy of money, and superiority of one race or religion over another are subject to open challenge. If such a place does not exist independent thought and effective action will be suppressed."

(d) "As a public resource we have a responsibility to explain problems, develop solutions and be accountable for what we do."

The Petitioner had asked the agency's chief executive officer to apply these principles to solving the issues brought before him. The Petitioner received no response. The Petitioner has not seen the agency's decisions and actions following these principles;

H. The admission to the agency's graduate programs and the F-1 Visa constitutes legal binding upon both parties with rights, responsibilities and obligations. The Petitioner is entitled to full right to education at the approved school as well as other legal rights as granted and protected by the state laws and federal regulations, the constitutions of the State and the United States;

I. The Petitioner believe that the agency's decisions and actions have violated the Petitioner's rights as described under the Article I Section 3 of the constitution of the State of Washington states that "No person shall be deprived of life, liberty, or property, without due process of law;" and under the Article I Section 4 indicates that "The right of petition and of the people peaceably to assemble for the common good shall never be abridge;"

J. The agency did not afford any proper proceeding of genuine academic reviews safeguard against academic misjudgment, and did not provide appropriate internal means

of accountability regarding institutional academic decision making. The Petitioner was never afforded any hearing before the decision-making body or bodies, at which the Petitioner shall have an opportunity to rebut the evidence being relied upon for his dismissal and accorded all other procedural due process rights under the Fourteenth Amendment.

To date, the Petitioner has not yet had an opportunity to fully inspect and review the documentation of the examination and the appeals; therefore, the Petitioner reasonably believes that the ultimate decision of the agency was not careful and deliberate. The decisions and actions were arbitrary or capricious. The Petitioner has never received any notice of faculty dissatisfaction with his performance and of the possibility of dismissal prior to the February 11, 2000 examination, and the January 31, 2003 disenrollment;

and based on one or more of the following:

(a) the order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied; or

(b) the order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law; or

(c) the agency has engaged in unlawful procedure or decision making process, or has failed to follow a prescribed procedure; or

(d) the agency has erroneously interpreted or applied the law; or

(e) the order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court; or

(f) the agency has not decided all issues requiring resolution by the agency; or

(g) a motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the granting of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion; or

(h) the order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) the order is arbitrary or capricious; and/or

(j) the agency action is based on based on one or more of the following:

a. Unconstitutional;

b. Outside the statutory authority of the agency or the authority conferred by a provision of law;

c. Arbitrary or capricious; or

d. Taken by persons were not properly constituted as agency officials lawfully entitled to take action.

8. WHEREFORE, Petitioner asks the court for judgment:

A. Invalidating all decisions and actions that were not properly conducted, and/or made in compliance with the University's rules, policies, state and federal laws and regulations; and/or not made in good faith and with accepted academic standard and professional norms; and/or that the agency's decision and/or action was made based on one or more of the causes indicated in the Paragraph 7 above.

B. Granting other relief as follows:

(a) A proper, fair remedy and relief including monetary compensation for damages in personal reputation, physically, psychologically and mentally stressed, as well

as opportunity lost in his professional career. The compensation includes full reimbursement of all tuitions and fees, interest/opportunity cost and living expenses since the initial admission to the initial doctoral degree program, regardless of sources of funds the Petitioner had used.

(b) Ordering the agency to make proper correction of all misleading and misrepresentation information related to the student on all University's records and communication including through public media. The agency ensures all recipients be fully informed of the corrected information.

(c) Awarding an amount of the maximum allowed for each day and each record that the Petitioner was denied the right to inspect or copy said public record. Establishing an indefinite life-time period if said public records missing, discarded or destroyed while the requests were outstanding to calculate the number of days for awarding.

C. With regard to genuine academic matter, establishing a proper review procedure that reviewers have academic expertise in the student's areas of study, and at least have the same academic expertise as the committee who made the decisions in dispute. The proper review shall evaluate the examination based on the whole records examined by the Court under RCW 42.17.340. The reviewers shall not be part of the agency and its affiliate.

Invalidating the agency's academic decision of February 11, 2000, and the subsequent decisions, if the Court finds there is no substantial, constructive evidence of the preliminary examination proceedings to explicitly demonstrating one or more of the following:

(a) The truthfulness, integrity and justification of the agency's decisions and actions;
(b) The decisions and actions were made based on accepted academic and professional norms; or
(c) The agency fully maintains the constitutional and student rights in conducting the academic decisions behind closed doors.

Nothing in this Petition for Review suggests or implies that the Petitioner asks the Court to review and make any genuine academic judgment of passing or failing the preliminary examination.

D. Awarding and assuring the right to education at the approved school with full graduation guarantee in the degree programs, at the expense of the agency, and with no time limit.

E. Awarding costs to Petitioner;

F. Awarding any further relief this court deems proper.

9. The Petitioner asks the court to appoint an attorney/a pro bono attorney to assist and/or represent the Petitioner through all judicial proceedings. This will assure that the Petitioner will proceed with proper court proceedings. The Petitioner has lived on limited sources of financial resources, and with no income since the Respondent by the University's administrators disenrolled the Petitioner on January 31, and terminated his on-campus employment on February 24, 2003.

DATED: July 23, 2003

s/Benjapon Sakkarapope
Petitioner

FILED
MAR 4 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
IN AND FOR WHITMAN COUNTY

BENJAPON SAKKARAPOPE,	)	
	)	
Petitioner	)	Case No. 03-2-00168-4
v.	)	
	)	MEMORANDUM IN
STATE OF WASHINTON,	)	OPPOSING OF
THE BOARD OF REGENTS,	)	MEMORANDUM
WASHINGON STATE	)	DECISION ON MOTION
UNIVERSITY	)	FOR SUMMARY
	)	JUDGMENT
Respondent.	)	
	)	

I, Mr. Benjapon Sakkarapope, am older than the age of eighteen years and competent to make the following statements:

I respectfully make this memorandum in opposing the Memorandum Decision on Motion for Summary Judgment issued on February 17, 2004.

EVIDENCE RELIED UPON AND ABBRIVATIONS

1. The following term will be used in this document:
   (A) Defense and Objections to Motion for Summary Judgment is referred as "DOMSJ."

(B) Memorandum in Support of Petitioner's Defense is referred as "MSPD."

(C) Memorandum Decision on Motion for Summary Judgment is referred as "MDMSJ."

(D) Memorandum in Support of Respondents' Motion for Summary Judgment is referred as "MSRMSJ."

(E) The Certified Records filed on February 6, 2004, is referred as "BS CR."

RULES TO SECURE THE JUST

I respectfully oppose the conclusion:

> "In all candor, the court finds Sakkarapope's original Petition for Review, his Memorandum in Support of Petitioner's Defense, and many of his other pleadings poorly written, unreasonably lengthy, confusing, and difficult to follow and understand."

Pursuant to RAP 10.7, if a party submits an improper brief, the court may order the brief returned for correction or replacement or stricken from the files with leave to a new brief within a specified time, or accept the brief. Nothing in the Civil Rules of Procedures specifies a standard of written quality of the court documents, but the rule requires each averment of a pleading simple, concise, and direct. The construction of pleadings is so construed as to do substantial justice. CR 8(e)(1) and (f) Petitioner respectfully believes he has followed the rules at his best ability to do so and in good faith.

Nothing in the Civil Rules requires that a party must complete a legal training profession, earn a passing grade from a law class or hold a certificate of pleading proficiency. The party initiated the action and has presented the facts at his best to seek and secure the just. The judge is not a law faculty; nor is an English grader. In the court of law, where a party is a non-speaking English person, the court still allows an interpreter in the proceedings. The language and documents are the means of communications in the judicial proceedings. The judge should not take such written style and confusion and not-fully understanding of the pleadings to

be an issue or a cause to exclude Petitioner's pleadings from consideration. Of course, Petitioner's English proficiency is not perfect, but he respectfully believes he has reasonably done his best under such limited time and knowledge in law practice.

When ruling on a summary judgment motion, the court is to view all facts and reasonable inferences therefrom most favorably toward the nonmoving party. *Weyerhaeuser Co. v. Aetna Cas. & Sur. Co.*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994). *Lybbert v. Grant County* 141 Wn.2d 29 Where the judge is still confusing, and having difficulty to follow and understand Petitioner's pleadings, the judge should not penalize the party by excluding what the judge is confused and does not fully understand, and then move into a conclusion on the subject matters. A more definite statement should be exercised for fully proper understanding of facts and the subject matter of issues brought before the court. CR 12(e) By not doing so, the judge would be prejudiced and discriminated the party based on such language differences in the judicial proceeding. The conclusion would not be impartial to secure the just. CR 1 The constitutionality of such conclusion is to call for attention.

FAILURE TO FILING VS. DEFENSE NOT WAIVED

I respectfully oppose the conclusion and practice:

> As stated earlier, the Memorandum in Support of Petitioner's Defense, which is Sakkarapope's primary response to WSU's motion for summary judgment, was filed one day before the summary judgment motion was scheduled for hearing. As such, it is untimely under CR 56(c), and must therefore be stricken by the court in its consideration of the issues presented. Specially, CR 56(c) requires the party opposing summary judgment to file and serve responsive pleadings and other documentation "not later than 11 calendar days before the hearing." As a litigant appearing pro se, Sakkarapope is not entitled to special treatment, but is bound by the same rules of

procedure and substantive law that apply to a litigant that is represented by counsel. *State v. Fritz*, 21 Wash. App. 354(1978). *Bonney Lake v. Delany*, 22 Wash. App. 193 (1978); *Bly v. Henry*, 28 Wn. App. 469 (1980).

The court is to view all facts and reasonable inferences therefrom most favorably toward the nonmoving party. *Lybbert v. Grant County,* 141 Wn.2d 29 The exclusion is not to secure the just and violates Petitioner's right to defend. CR 12(b). Petitioner does not waive his right to defend.

In *French v. Gabriel*, 116 Wn.2d 584, 806 P.2d 1234, the court held there was no waiver because the defendant preserved the defense by pleading it prior to objecting to the trial date, taking a deposition, and consenting to amendment of the complaint. *French*, 116 Wn.2d at 594; see also *Voicelink Data Servs., Inc. v. Datapulse, Inc.*, 86 Wn. App. 613, 625, 937 P.2d 1158 (1997) (participating in substantive discovery did not waive defense since it was pleaded prior to engaging in discovery); *Crouch v. Friedman*, 51 Wn. App. 731, 735, 754 P.2d 1299 (1988) (raising defense in answer prior to engaging in discovery is sufficient to preserve the defense). Moreover, the answer, although late, was filed more than a year before the statute of limitations extinguished the plaintiffs claim. Although the court expressed displeasure at the defendant's failure to file a timely answer, the court noted that '"mere delay in filing an answer does not constitute a waiver of an insufficient service defense.'" *French*, 116 Wn.2d at 593-94 (quoting *French v. Gabriel*, 57 Wn. App. 217, 222, 788 P.2d 569, review granted, 114 Wn.2d 1026, 793 P.2d 976 (1990)). *Id.*

Under CR 56(c), the nonmoving party is entitled to 17 days to prepare for a response not later than 11 days and to receive a rebuttal not later than 5 days, prior to the hearing. While knowing that Petitioner had to prepare for defense on the two motions on January 16, 2004, Respondent initiated an

insufficient process that impaired Petitioner to meet such rule.

Despite of the contention, the time limitation under CR 56 was tolled. The Court could not reach such a conclusive decision at the end of the hearing, but reached a decision 11 days later. The summary judgment process was automatically enlarged. Petitioner, therefore, fulfilled the time limitation under CR 56.

However, on the other hand, Respondent has obligation to file a rebuttal not later than 5 calendar days prior to the hearing and had about 24 hours prior to the hearing, but did not make any attempt to file a rebuttal. From February 6 to 17, 2004, Respondent had additional 11 days to file a rebuttal before the court, but failed to do so. Respondent failed to comply with CR 5 and CR 56(b). Nor time extension was asked. Petitioner does not waive a right under CR 5(d).

Pursuant to CR 5(d), no sanction shall be imposed if prior to the hearing the pleading is filed and the moving party attorney is notified of the filling before he leaves his office for the hearing. Even if a failing to file a paper, upon a notice of motion for sanction, the court may take action unless good cause shown for or justice requires, the granting of an extension of time.

The facts are: (i) Respondent did not assert any imposition to such sanction for late filing, (ii) Petitioner had shown efforts to enlarge or pending the hearing, (iii) when the motion for pending action of Motion for Summary Judgment was filed on January 30, 2004, the time for filing was tolled, (iv) Petitioner also gave the counsel a notice that the certified records would be filed prior to the hearing. CR 5(d) Petitioner has shown good faith and effort to comply with all the rules at his best.

Under the APA, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. RCW 34.05.020. No pleading shall be excluded from the proceeding. The Counsel should not be

given a privilege from failure to filing a rebuttal prior to the hearing and to setting a sufficient process of summary judgment. CR 56.

Even if Respondent is not required to serve any rebuttal, by not making any rebuttal, it is equivalent to that Respondent did not have any objection to the facts and bases of Petitioner's documents filed in opposing to the Motion for Summary Judgment. Petitioner's motion and memorandum in support are valid without objection despite of the Court's claim of written quality.

Therefore, such conclusion that "...Sakkarapope is not entitled to special treatment,..." is in error and partial. The supporting authority does not apply under this specific circumstance. The application of late filing for exclusion of Petitioner's defense is not supported by the authority. Petitioner's right to defend is not waived; it is still preserved. *Lybbert v. Grant County,* 141 Wn.2d 29. Petitioner's Motion on defense was filed pursuant to CR 12(b). *See* DOMSJ. The Petitioner defense's right should not be impaired. Where a defense is not waived, the Court should allow and consider all issues and evidence presented as to the same. RCW 34.05.020. Respondent should not be given a privilege to exclude admissible evidences presented. Petitioner respectfully believes the Court should not penalize the innocent party.

STATUTE OF LIMITATION: RUN VS. TOLL

The statute of limitation is tolled under a certain condition. The limitation of thirty days is tolled under the following conditions:

(A) Petitioner did not know and was under no duty to discover;

(B) Petitioner could not reasonably have discovered that the agency had taken the action; or

(C) The agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter. RCW 34.05.542(3).

The statute of limitation is tolled during the period a petitioner is seeking administrative remedies available. The statute of limitation will run after the end of thirty days of the last administrative remedy sought. "A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies within the agency whose action is being challenged or available within any other agency authorized to exercise administrative review, except:..." RCW 34.05.534

The statute of limitation under the APA over the subject matter of educational records is governed by FERPA. RCW 34.05.080(4); RCW 34.05.040. FERPA allows 180 days to file a complaint with the FPCO. 34 C.F.R. §99.64. Sakkarapope timely filed a complaint with the FPCO on September 27, 2002 after the decision of April 5, 2002. The subject matter has been under the federal jurisdiction since then; the subject matter arises under the federal statute. Sakkarapope filed a request for reconsideration before the Provost and a petition for review with the Superior Court as supplemental to the original jurisdiction to review the brief adjudicative proceeding of which the state court has jurisdiction under the APA. *See* the Attachment VI of the PFR; MSPD at 2-3, 28-31.

On February 24, 2004, Sakkarapope filed a complaint under FERPA claim with the U.S. District Court, Eastern District of Washington, since the Department of Education notified its final decision. Thus, the statute of limitation of the subject matters of the decisions and actions of April 5 and November 6, 2002 did not run.

RCW 34.05.419(1) Except in situations governed by subsection(2) or (3) of this section, within ninety days after receipts of the application or of the response to a timely request made by the agency under subsection (2) of the section, the agency shall do one of the following: (a) Approve or deny the application, in whole or part, on the basis of brief or emergency adjudicative proceedings, if those proceedings are available under this chapter for disposition of

the matter; (b) Commence an adjudicative proceeding in accordance with this chapter; or Dispose of the application in accordance with RCW 34.05.416.

RCW 34.05.413(2) "When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding."

RCW 34.05.413(4) "If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings."

In *Sakkarapope*, WSU did not either commence an adjudicative proceeding or dispose the application for adjudication pursuant to RCW 34.05. Given even if the February 1, 2001, decision is final, the statute of limitation would have run if Sakkarapope had done nothing. However, the facts in the records show that Sakkrapope had persistently sought administrative relieves from the lower to the highest authority under the statutory delegation of power. After the end of January 24, 2003 Board meeting, Sakkarapope filed an application for adjudicative proceeding pursuant to RCW 34.05 on February 23, 2003. The last administrative remedy sought was made on June 12, 2003. No response was made by the agency.

The Petition for Review was filed with the Superior Court on July 23, 2003. Thus, Sakkarapope fulfilled the requirement of exhaustion remedies pursuant to RCW 34.05.534 and timely filed a petition for review. The statute of limitation of the IIDP and M.S. program dismissals did not run. *See* MOMDSJ; Attachment I of MSPD.

AVAILABILTY OF ADMINISTRATIVE REVIEW VS. PROCEDURAL SAFEGUARD TO GUARANTEE DUE PROCESS

Legislative power may be constitutionally delegated to an administrative agency when reasonable standards are prescribed as to what is to be done and who is to do it.

Caffall Bros. Forest Prods., Inc. v. State, 79 Wn.2d 223. 484 P.2d 912 (1971), Keeting *v. PUD 1,* 49 Wn.2d 761, 306 P.2d 762 (1957). The legislature must provide standards or guidelines which define in general terms and the instrumentality or administrative body which is to accomplish it. *Rudy v. Hollis*, 81 Wn.2d 88, 500 P.2d 97. Where the power to be exercised is quasi-judicial in nature, such standards need not be, and cannot be, perfectly specific, provided normally acceptable limits of punishment or compensation are set, and procedural safeguards to control arbitrary administrative action and to guarantee due process, are contained in the delegation of power. *Guy Rody e al., v. Walter D. Hollis et al.*, 81.Wn.2d 88.

This is particularly so where the power which is exercised is quasi-judicial in nature, as in the instant case. Judicial power is traditionally and of necessity largely discretionary and standardless. The judicial process operates upon individuals and, in so doing, attempts to treat them as such. All that can, and should, be done is to define the conduct sought to be punished, or the injury to be compensated, set out the normally acceptable limits of punishment or compensation, and then allow the adjudicative body to determine the appropriate punishment or compensation by applying general principles of morality and traditional concepts of justice. *Rudy v. Hollis*, 81 Wn.2d 88, 500 P.2d 97.

An additional factor which tends to establish the constitutionality of a delegation of legislative power is the existence of procedural safeguards to control arbitrary administrative action and guarantee due process of law to individuals and entities affected by such administrative action. *Id.*

Due process of law is defined in *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617 (1968). The constitutional elements of procedural due process, and thus of a fair hearing, are: notice; an opportunity to be heard or defend before a competent tribunal in an orderly

proceeding adapted to the nature of the case; an opportunity to know the claims of opposing parties and to meet them; and a reasonable time for preparation of one's case. A "competent tribunal" may very well be an administrative officer or body, as well as a court. *Lloyd Sabaudo Societa Anonima Per Azioni v. Elting*, 287 U.S. 329, 77 L. Ed. 341, 53 S. Ct. 167 (1932). *Id.*

In *Sakkarapope* case, the issues are whether appropriate procedural safeguards are provided and the requirements of due process are met. Legislative power was delegated to the Board of Regents, a governing body. RCW 28B.10.528; RCW 28B.30.150; *see* also MSPD at 9. The Board of Regents has full control of the university and authority to grant students such certificates or degrees, as recommended for such students by the faculty. RCW 28B.30.150(1) and (4); *see* also BS CR at 186, 188. Each member of the Board of Regents took the oaths "to discharge faithfully and honestly his duties and to perform strictly and impartially the same to the best of his ability." RCW 28B.10.520. *See* also BS CR at 5.

The Board of Regents published a procedure access to it in Faculty Manual on page 6 and By Law. An individual may approach to the Board through the President of the University and shall be accorded the opportunity to present a direct appeal to the Board through this channel. *See* MSPD at 9. A student can access to the board as provided by the guidelines and procedure established for submittal of items for the agenda. By Law Article II section K. Any person who wishes to bring a matter to the attention of the Board may do so by submitting written communication to the Board through Office of the President, Washington State University. By Law Article I section J.

WSU By Law Article III describes duties of the Academic, Faculty, and Student Affairs Committee: "[t]he Academic, Faculty, and Student Affairs Committee shall consider matters pertaining to the teaching, research, and

public service missions of the University, as well as matters pertaining to faculty, students, and student life."

Under the State Constitution, Article I, section 3: "No person shall be deprived of life, liberty, or property, without due process of law;" and section 4: "The right of petition and of the people peaceably to assemble for the common good shall never be abridged."

Under RCW 34.05.410(1), adjudicative proceedings are governed by RCW 34.05.413 through 34.05.476, except—brief or emergency adjudicative proceedings or declaratory proceeding. The IIDP and M.S. program dismissals are not the subject matter of brief adjudicative proceeding. WAC 504-04-010; WAC 504-04-110; *see* BS CR at 190-2. The State Constitution guarantees Sakkarapope of procedural safeguards and the requirements of due process.

The Graduate Student Code on page 8-9 describes WSU adjudication of rights and responsibilities to deal with the subject matters in dispute. Where a concern arises, it is imperative for graduate student to know of options available for resolution. These course of action is to seek resolution at the lowest possible level with one's advisor, the department program coordinator, or when necessary through the department chair. If a student is unable to remedy the situation through these means, or if there is a reason why these individuals cannot be approach, problems can be taken directly to another appropriate office. *See* BS CR at 167-9.

The Graduate Student Code, WSU, on page 2 also describes graduate students at WSU shall maintain the right to be governed by clearly stated and justifiable academic procedures, rules, and regulations.

When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding. RCW 34.05.413(2). If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate

adjudicative proceedings, whether or not the applicant expressly requests those proceedings. RCW 34.05.413(4).

The provisions of Washington State University and the rules adopted by the University, concerning such administrative remedy and resolution, provides that Sakkarapope, a graduate student, is entitled to a hearing upon the charges giving rise to his dismissal. Implicit in such provisions is that such a hearing shall be fair and impartial, and before an unbiased tribunal. Such protections are inherent in the word "hearing" and without them hearing procedures could be seriously infected. *See Interstate Cornmerce Comm'n v. Louisville & Nashville R.R.*, 227 U.S. 88, 57 L. Ed. 431, 33 S. Ct. 185 (1913). These protections, and the concepts of fundamental fairness they project, are inherent in the notions of "administrative due process" and have been recognized by the court as late as *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969); *State Ex Rel. Beam v. Fulwiler*, 76 Wn.2d 316.

The demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding so long as the requisite hearing is held before the final order becomes effective. The right to procedural due process in administrative hearings establishes the principle that a person may not be deprived of a protected right unless he is first given notice and an opportunity to be heard. *Shirley Bowing v. Board of Trustee of Green River Community College,* 85 Wn.2d 300. In Sakkarapope, WSU did not afford any adjudicative proceeding in regard to the IIDP and M.S. program dismissals. The agency's records has clearly shown constitutional flaw in the administrative process. None of the WSU's decisions and actions made meet the definition of due process. *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617 (1968). WSU's claims have no merit confined with the certified records. Respondent and the Court offers no evidence on the records supporting the claims in the findings of facts and conclusion of law. Nor does the

Memorandum Decision discuss the issue and authority. Thus, Sakkarapope's due process right has been deprived.

In addition, while Sakkarapope sought to enforce the oaths the Regents took pursuant to RCW 28B.10.520, WSU's counsel, Steve Vinsonhaler, asked the Office of the Governor not to engage in the subject matter. *See* BS CR at 151. The Respondent's intervention is clearly to demonstrate the intention to deprive Sakkarapope's constitutional rights.

To date, Sakkarapope still has not seen his 2000 IIDP examination on the portions he received failing grades. WSU released the examination only the portions he received a passing grade. Sakkarapope still has not seen the records of the reviews made by the CGSRR, Dr. DePauw, Provost Hopkins and Provost Bates. No explanation and clarification was provided regardless of the number of requests. On January 16, 2004, this Court also quashed the subpoenas dated December 8, 2003 and January 12, 2004 of which the examination at issues are the subjects of the subpoena. *See* MSPD. The issue is what records of facts the Court reviewed to reach such conclusion in favor of the agency.

FINALITY OF AGENCY ORDER OR ACTION VS. APPEALABILITY

Like in *State Ex Rel. Beam v. Fulwiler*, the decision made by the city manager is appealable before the commission of the city. The Board of Regents is a governing-body of the University and has full power delegated by the State Constitution. The Board of Regents constitutes the last appellate tribunal. RCW 28B.30.150(1). This is the last resource within the agency authority one can seek administrative relief.

RCW 34.05.461(2) describes, "...., the presiding officer shall transmit a full and complete records of the proceedings, including such comments upon demeanor of witness as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted." Where are such records on the certified records? Obviously, the

subject of the subpoenas may include part of them, but the Court quashed the subpoenas precluding Sakkarapope access to these records for preparation on his defense.

An agency action means "licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits." RCW 34.05.010(3). The label affixed to the action by the administrative agency is not determinative of its finality. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon. RCW 34.04.130(1). *Dept. of Ecology v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181.

An order means "a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons." RCW 34.05.010(11)(a).

Is the action by Provosts taken a "final action or order" under the Washington administrative procedure act? This query brings into application the overlapping doctrines of the final order rule, exhaustion of administrative remedies and ripeness for review, which all deal with the problem of whether a petitioner seeking judicial review has prematurely resorted to the courts. What is sometimes called the "final order doctrine" prevents review of an order which is not final under a statutory provision for review of an "order." *Federal Power Comm'n v. Metropolitan Edison Co.,* 304 U.S. 375, 82 L. Ed. 1408, 58 S. Ct. 963 (1938). *Dept. of Ecology v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181.

Since there are no Washington cases discussing what is meant by a "final decision" under RCW 34.04.130, the court feel it appropriate to look to the federal realm for guidance in this area. Initially, it is noted that whether or not the statutory requirements of finality are satisfied in any given case depends not upon the label affixed to its action by the administrative agency, but rather upon a realistic

appraisal of the consequences of such action. *Isbrandtsen Co. v. United States*, 211 F.2d 51, 55 (D.C. Cir. 1954). Justice Frankfurter stated in Columbia Broadcasting System, Inc. v. United States, 316 U.S. 407, 425, 86 L. Ed. 1563, 62 S. Ct. 1194 (1942), that:

> The ultimate test of reviewability is not to be found in an overrefined technique, but in the need of the review to protect from the irreparable injury threatened in the exceptional case by administrative rulings which attach legal consequences to action taken in advance of other hearings and adjudications that may follow, the results of which the regulations purport to control. Thus, administrative orders are ordinarily reviewable when "they impose an obligation, deny a right, or fix some legal relationship as a consummation of the administrative process." *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 113, 92 L. Ed. 568, 68 S. Ct. 431 (1948). See generally K. Davis, Administrative Law Text § 21.06 (3d ed. 1972); 3 K. Davis, Administrative Law Treatise §21.07 (1958); W. Gellhorn & C. Byse, Administrative Law - Cases and Comments 213-15 (5th ed. 1970). *ept. of Ecology v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181.

In *Dept. of Ecology v. Kirkland 84*, Wn2.d 25, 523 P.2d 1181, the court held that decision "ripe for review" and fully qualifying it as a "final decision" under RCW 34.04.130. In addition, the language of RCW 34.04.130 providing for reconsideration of agency determinations is not of a mandatory nature. The fact that the petitioners did not request a reconsideration of this matter before the board does not render the board's action nonfinal. The court also held that the statement issued by the chairman of the board constitutes a "final action" by the board since by the operation of law the action...in granting the permit stands affirmed." *Id.* Unlike, in *Sakkarapope*, Petitioner made a request for reconsideration, explanation and clarification of

the orders/decisions in every steps in the administrative process. No response and ignoring was always provided.

In *Valley View v. Redmond,* 107 Wn.2d 621, 733 P.2d 182, the court held that a letter from an agency will constitute a final order if the letter clearly "fixes a legal relationship as a consummation of the administrative process." Such a letter must be so written as to be clearly understandable as a final determination of rights. *BOCK*, at 99. However, doubts as to the finality of such communications must be resolved in favor of the citizen. In *LEE v. JACOBS,* 81 Wn.2d 937, 506 P.2d 308 (1973), a state agency argued that certain letters denying benefits were final orders in a workers' compensation dispute. The court stated:

> "That is nonsense. If every letter from every agency of state government which arrives on a lawyer's desk must be scrutinized to determine if it contains an appealable order, indeed a burden of considerable magnitude will have been created by fiction. *LEE*, at 940-41; *Valley View v. Redmond,* 107 Wn.2d 621, 733 P.2d 182

In *Sakkarapope*, the Present of the Board of Regents did not issue any written statement. Then, the decisions of February 1, 2001 made by Interim Provost Hopkins and of November 6, 2002 made by Provost Bates, of November 25, December 18, 2002 and January 31, 2003 made by Howard Grimes were not constituted a final decision by the agency.

Sakkarapope repeatedly asked the agency to release all records under the administrative reviews for inspection and review and copy, and notified the agency he reserved his right to seek further remedies upon full disclosure of the records. Additionally, Sakkarapope appealed and requested for explanation and clarification of such orders as well as requests for reconsideration. *See* CR 557-9, 622-29, 637-53, 281-3, 318-73. No clarification and explanation was made, but ignoring. Nor was fully disclosed of the requested records. With no doubt, the correspondent letters on the certified records have clearly indicated Sakkarapope's efforts

in this regard. Thus, those decisions were nonfinal, premature and appealable within the agency authority to the higher offices of the agency, the Board of Regents. *Id.*

While the Council's action would have been final if [he] had done nothing further. [He] continued to seek the Council's approval of his application... Because of his continued efforts, it cannot be said that [he] had exhausted his administrative remedies at the time of the council's initial action. A final action ...did not occur until the council ultimately approved his application. If the court adopted the position..., would, in order to avoid a potential bar of the statute or limitations, be forced to bring an action for damages before final action on their application had been taken by the administrative agency. That makes no sense because it would force applicants ...to file an action for damages before their cause of action was ripe. *Hayes v. City of Seattle,* 131 Wn.2d 706, 934 P.2d 1179.

STATUTE OF LIMITATION VS. EXHAUSTION OF ADMINISTRATIVE REMEDIES

I respectfully oppose the conclusion and finding:

> Despite Sakkarapope's argument to the contrary, WSU's final decision to terminate him from the IIDP was made and communicated to Sakkarapope on February 1, 2001. On that date, WSU Provost, Dr. Ronald Hopkins, sent Sakkarapope a letter affirming Dean DePauw's decision to dismiss Sakkarapope from the doctorate program (CR 273). The letter specifically advised Sakkarapope that this decision represented the University's final decision. Under RCW 34.05.542, therefore, Sakkarapope had thirty days from February 1, 2001 to file his Petition for Review with the Superior Court. His failure to file such a petition for approximately 28 months after this date deprives the court of jurisdiction to review WSU's decision. *The fact that Sakkarapope disagreed with the Provost and felt he was entitled to repeated reconsideration and review within various*

levels of WSU's orgainational structure, including the Board of Regents, is without merit. Sakkarapope has presented no valid legal authority to support a right to such further review, or to consideration by the Governor's Office, and even if such right were found to exist, Mr. Sakkarapope's appeal is still untimely. In every instance where Sakkarapope sought further administrative review of his termination from the IIDP, WSU's written rejections of these efforts was received well over 30 days from the date the Petition for Review was filed. [Emphasis added]

As discussed earlier, where no decision on an application for adjudicative proceeding or no explanation and clarification of the order responsive to the request was made, the decision/action is nonfinal. Where the matter is related to professional expertise, exhaustion of administrative remedies is proper. Petitioner fully exhausted all administrative remedies. The statute of limitation is tolled.

Legislative power may be constitutionally delegated to an administrative agency when reasonable standards are prescribed as to what is to be done and who is to do it. Where the power to be exercised is quasi-judicial in nature, such standards need not be, and cannot be, perfectly specific, provided normally acceptable limits of punishment or compensation are set, and procedural safeguards to control arbitrary administrative action and to guarantee due process, are contained in the delegation of power. *Guy Rody e al., v. Walter D. Hollis et al.*, 81.Wn.2d 88.

Faculty Manual on page 6 clearly indicates the procedure access to the Board of Regents and the Board has sole power over the University in all duties. RCW 28B.10.528, see MSPD at 9.

When an adequate administrative remedy is provided by statute, relief must be sought by exhausting that remedy before the courts will act. The court recognized the doctrine of the exhaustion of remedies in *State ex rel. Shomaker v. Superior Court*, 193 Wash. 465, 476, 76 P. (2d) 306;

McAvoy v. Ernst, 196 Wash. 416, 83 P. (2d) 245; and *Bowen v. Department of Social Security*, 14 Wn. (2d) 148, 127 P. (2d) 682. (See annotation "Regulations as to Milk: b. Hearings; . . ." 122 A. L. R. 1062 at 1122.) The doctrine involves a policy of orderly procedure which favors a preliminary administrative sifting process. This is particularly true when the issue presented involves technical matters peculiarly within the competence and special skills of an administrative authority. *Sunny Brook Farms v. OmDahl*, 42 Wn.2d 788, 259 P.2d 383 (1953).

The legislature set forth, clearly and unambiguously, the procedure by which one feeling himself aggrieved, by any action of the director in the enforcement of any provision of the act, might have a speedy hearing should he desire it. The statute requires the director, upon request, to hold a hearing at which the protestant has an opportunity to present his side of the controversy. It gives to the protestant the protection of an eventual and orderly appeal to the courts. *Id*

It has been clearly held that if the orders made under the acts in question are not arbitrary fiats, the courts will not interfere, and that one who is dissatisfied with an administrative order made under the acts must utilize the administrative remedy provided for in the statute before resorting to suit for injunction to contest the validity of the orders. (*Hegeman Farms Corp. v. Baldwin,* 293 U. S. 163). The same rule has been enunciated in cases involving analogous provisions of statutes of other States. (*Pacific States Box & Basket Co. v. White,* 296 U. S. 176; 56 S. Ct. 159, 163; *Dismuke v. United States*, 296 U. S. 554; 56 S. Ct. 400, 403.) *Sunny Brook Farms v. OmDahl*, 42 Wn.2d 788, 259 P.2d 383 (1953).

In *Sakkarapope*, Petitioenr recognized the doctrine of the exhaustion of remedies and went through a vain, useless and futile administrative authority to have the agency correct the problems itself. What if Sakkarapope filed a petition within 30 days as of February 1, 2001, would this Court and/or Respondent make a claim that the administrative

remedies or process have not yet had exhausted to dismiss the case anyway?

The agency had ignored Sakkarapope's rights of petition and due process of law under Article I section 3 and 4. WSU is required to afford due process prior to or after such dismissals. The agency's records show WSU did not afford Sakkarapope's due process of law guaranteed by the State Constitution. The Petition for Review was filed with the Superior Court on July 23, 2003. Thus, Sakkarapope fulfilled the requirement of exhaustion remedies pursuant to RCW 34.05.534 and timely filed a petition for review. *See* MOMDSJ; Attachment I of MSPD.

STATUTE OF LIMITATIONS: STATE VS. FEDERAL JURISDICTIONS

I respectfully oppose the fact and the conclusion:

> Despite statements in the Petition for Review to the contrary, Sakkarapope now asserts that he is not seeking judicial review of WSU decisions relative to his educational records under FERPA. Even if he had sought such review, the record undisputedly established that WSU's final decision on the accuracy and completeness of Sakkarapope's educational records was issued on November 6, 2002 (CR 620-21), and that the Petition for Review was no filed for some eight months thereafter. Like the IIDP appeal, such lengthy delay in seeking judicial review of this decision deprives the court of jurisdiction to hear and determine this issue. The Court will enter an order pursuant to both Sakkarapope's request and to WSU's motion for summary judgment, dismissing the FERPA question as an issue for this court's review.

In this case, the IIDP appeal and the issues of educational records are not comparable. Both are not under the same statute and circumstance. The IIDP appeal is under the State Constitution. The state court has original jurisdiction. But the issues of educational records are under the federal statute, FERPA.

The Petition for Review on the portion of Paragraph 3B was brought for review under the APA in which the state court has jurisdiction over a procedural matter of brief adjudicative proceedings as to that the agency adopted the proceeding to conduct a hearing in compliance with FERPA. The state court does not have original jurisdiction over the subject matter of whether the agency's decisions and actions are in compliance with FERPA.

The statute of limitation under the APA over the subject matter of educational records is governed by FERPA. RCW 34.05.080(4); RCW 34.05.040. As discussed earlier, the statute of limitation in this matter did not run.

Despite of the statute of limitation, Petitioner did not ask the court to dismiss the cause of action of the portion of Paragraph 3B of the Petition for Review, but he made objection to Respondent's claim. The Court's conclusion that Sakkarapope's request to dismiss this matter is in error. The Court should realize and make distinction between the two jurisdictions as presented above. The review on a procedural ground of the brief adjudicative proceeding under the APA is supplemental to the original jurisdiction, FERPA.

Despite of the contention of the subject matter at issues, since the motion for supplemental jurisdiction was filed with the U.S. District Court on March 4, 2004, the subject matter is no longer under the state court jurisdiction unless the U.S. District Court declines to take supplemental jurisdiction. However, Petitioner respectfully believes there is no reason to decline such request because the federal court has original jurisdiction over the agency's decisions and actions at issues. The issues of brief adjudicative proceeding under the APA are already attached to the federal claim. The supplemental jurisdiction would be to secure the just and reduce the issues of overlapping between the two jurisdictions.

Petitioner made clear that Respondent seek relief on the subject matter outside of the PFR. *See* MSPD at 2-3, 28-31. By entering such order, it is equivalent to that the Court

imposes a rule depriving Petitioner's right to seek relief under FERPA, and that the order is outside of authority or jurisdiction and outside of the case. In this instant, an application of the APA will diminish the constitutional rights of Sakkarapope or to limit or repeal additional requirements imposed by the statute or otherwise recognized by law. RCW 34.05.020. Such order is called for unconstitutional. The Court should not take any further ruling in this matter to prevent the unnecessary issue of constitutionality in further proceedings.

INCORPORATION AND CONSOLIDATION OF ACTIONS: EFFICIENCY AND TO-SECCURE-THE-JUST

I respectfully oppose the conclusion and finding:

> In his Petition for Review, Sakkarapope not only sought review of administrative decisions made by WSU under 34.05.510 et seq., but he claimed that WSU violated the Open Public Records Act, and he sought relief for this violation pursuant to RCW 42.17.340. As WSU argues, however, an appeal under the APA is a review on the record, whereas an Open Public Records Act dispute is an original action initiated by an order to show cause. An Open Public Records Act challenge is based not only the agency records, but also upon the presentation of new evidence. RCW 34.05.558; RCW 42.17.340(1). Sakkarapope's issues pertaining to his public records requests are therefore not properly before the court, and are subject to summary dismissal without prejudice.

The conclusion, "Sakkarapope's issues pertaining to his public records requests are therefore not properly before the court," was made with no supporting authority how such WSU's claim is valid and how the incorporated of the two provisions is not proper. The conclusion is contradictory to WSU's history of withholding of records. The Court quashed the two subpoenas on January 16, 2004 and this

demonstrates that WSU does not have intention to present any new evidence, but withholding evidence and the Court supports such action.

WSU and the Court offer no authority from any case or treatise supporting the proposition and demonstrating that the incorporated of the two provisions violates any right or prohibits by any provision of law. Petitioner respectfully believes WSU's argument is nonsense: (i) nothing prevents WSU to present new facts and evidences, (ii) Petitioner's motions to show cause were filed, WSU already had opportunity to fully present evidences as it wants. This Court did not order to show cause, but simply ignored such motions without providing any reason or authority why the Court ignored them. And now claim such incorporated is not proper and subject to dismissal. The Court is far short to offer what authority the court adopts to summary dismissal. A personal opinion is prejudiced and not sufficient. Where the authority does not exist or is not presented before the Court, it should take no action in favor of the moving party.

WSU's argument is also contradictory to its persistent claim that it certified all agency's records it has on September 22, 2003. In numerous communication letters on the agency's records, WSU stated repeatedly the requested records do not exist or already provided. By claiming that it wants a full opportunity to present new evidence, this simply demonstrates that WSU still has a lot of new evidence in hands or it still withholds the agency's records from Petitioner. As an equal right party at issues, Petitioner has equal access to the same evidence. RCW 34.05.020. The issue is whether this Court is prejudiced by allowing WSU to have more privilege than Petitioner in related to evidence.

SUMMARY JUDGMENT

I respectfully oppose the conclusion and finding:

> Even if Sakkarapope's response were not stricken, however, the court's review of that document discloses that it presents little evidence, if any, that would raise a genuine issue of fact material to the

issues pres[illegible]d, and no valid legal authority that would support a denial of WSU's motion for summary judgment.

The assertion and conclusion are not sufficiently supported by the material facts of evidence already presented before this court as well as the existing authorities as presented above.

In *State Ex Rel. Beam v. Fulwiler*, the decision on the appeal was announced in advance. The fact that four of the commissioners recommended respondent's discharge does not necessarily preclude their impartiality at the appeal hearing where respondent will have the opportunity to present evidence on his behalf. A judgment at this stage that the commissioners are disqualified upon the record now before us necessarily involves a prediction that the commissioners will let bias influence their decision at a hearing which has not been held yet. *State Ex Rel. Beam v. Fulwiler*, 76 Wn.2d 313.

The doctrine of exhaustion of administrative remedies was formulated to absolve the courts of this difficult task. This court has consistently held that when an adequate administrative remedy is provided by statute, it must be exhausted before the courts will intervene. State ex rel. Association of Wash. Indus. v. Johnson, 56 Wn.2d 407, 353 P.2d 881 (1960); Sunny Brook Farms v. Omdahl, 42 Wn.2d 788, 259 P.2d 383 (1953). This requirement, of course, applies regardless of the type of court intervention sought, including petitions for writs of certiorari and mandamus. *State Ex Rel. Beam v. Fulwiler*, 76 Wn.2d 313

In Sakkarapope, Dr. DePauw bypassed her review of the IIDP matter as the department chair and already dismissed him on April 26 and 27, 2000 while advising him to file a formal appeal before the Graduate School. Such decision of dismissal was already made in advance prior to any proceeding or administrative review.

This Court stated at the conclusion of the February 6, 2004 hearing that it found genuine issues, but now its finding

and conclusion are contradictory to its previous findings and conclusion. This Court offers nothing to solve the discrepancies of its findings and conclusion. Moreover, this Court excluded the issues and evidences Sakkarapope filed prior to the hearing due to late filing as discussed above. Then, here the same Court uses, the term, "if any," in which it suggests that the Court did not review the records, and conclude such validity of legal authority. Petitioner respectfully believes the existing authorities presented above are sufficient to deny WSU's motion for summary judgment.

I respectfully oppose the conclusion and finding:

> WSU additionally requests summary judgment affirming its decision dismissing Sakkarapope from his Mater of Science in Statistics program. In support of this request, WSU refers the court to the administrative record that it filed and certified in this case. WSU argues that this record supports a finding that Sakkarapope refused to complete his Masters Degree after being given a reasonable opportunity to do so, and that it was this refusal that led to his dismissal from the Masters program. Once the moving party sustains the initial burden in a summary judgment proceeding of coming forward with evidence that the case involves no genuine issue of material facts, the burden then shifts to the nonmoving party to show that a genuine issue of material fact does exist. *Fischer-McReynolds v. Quasim*, 101 Wn. App. 801 (2000). If the nonmoving party cannot simply demonstrate that factual issues exist, summary judgment is appropriate. Id. The nonmoving party cannot simply rely on argument and pleadings, but must come forward with admissible evidence. CR 56(c). Despite statements in the pleadings and arguments to the contrary, Sakkarapope has presented no admissible evidence to support his positions, and he has failed to raise a genuine issue of facts as to his claim that WSU breached his

educational contract or that WSU deprived him of due process of law. This is particularly true given the fact that the court must strike his responsive pleading under CR 56(c). As a result, WSU is entitled to summary judgment affirming Sakkarapope's dismissal from his Mater's program.

When ruling on a summary judgment motion, the court is to view all facts and reasonable inferences therefrom most favorably toward the nonmoving party. *Weyerhaeuser Co. v. Aetna Cas. & Sur. Co.*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994). A court may grant summary judgment if the pleadings, affidavits, and depositions establish that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Ruff v. King County*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995); see also CR 56(c). *Lybbert v. Grant County*, 141 Wn.2d 29.

The fact is that the pleadings, depositions, answers to interrogatories, and admissions are not yet fully on file: (i) the issues of the subpoenas dated December 8, 2003 and January 12, 2004 quashed on January 16, 2004, are not final, but pending for review by the Appellate Court; (ii) the issue of the order on limiting discovery entered on January 16, 2004 is not final, but pending for review by the Appellate Court; and (iii) there are discoveries have not been answered and filed.

On January 16, 2004, the Court did not enter any order whether (i) Request for Production of Document, (ii) Request for Organizing the Records, and (ii) the last discovery: Request for Admission (Paragraph 3E of Petition for Review: DePauw, December 19, 2003) are protected and under what condition. The Court entered a protective order limiting Petitioner from engaging in additional discovery. Thus, the three discoveries are not protected. However, the answers to the three discoveries have not yet been answered. Without waiving any right to compelling the discoveries, Respondent failed to comply with CR 26, 34, 36, and RCW 34.04.566(4).

Therefore, the entire material facts are not yet on file. The issues of material facts have not been solved or answered. The Court should not lower the standard of the Civil Rule 56(c). Such application of the authority would not meet the standard test.

Such conclusory action taken without regard to the surrounding facts and circumstances is arbitrary and capricious, such action being defined as a "'willful and unreasoning action, taken without regard to or consideration of the facts and circumstances surrounding the action.'" *Kendall v. Douglass, Grant, Lincoln & Okanogan Counties Pub. Hosp. Dist.* 6, 118 Wn.2d 1, 14, 820 P.2d 497 (1991) (quoting *Abbenhaus v. City of Yakima,* 89 Wn.2d 855, 858-59, 576 P.2d 888 (1978)). *Hayes v. City of Seattle,* 131 Wn.2d 706, 304 P.2d 1179.

The term, "arbitrary and capricious," in the context of agency decision making can be defined as follows: "Administrative action is arbitrary and capricious only when it is willful and unreasoning or taken without consideration and in disregard of the facts." *State v. Wittenbarger,* 124 Wn.2d 467, 486, 880 P.2d 517 (1994). "Where there is room for two opinions, action is not arbitrary and capricious when exercised honestly and upon due consideration though it may be felt that a different conclusion might have been reached." *Cougar Mountain Assocs. v. King County,* 111 Wn.2d 742, 750, 765 P.2d 264 (1988) (quoting *Barrie v. Kitsap County,* 93 Wn.2d 843, 850, 613 P.2d 1148 (1980)). "A judicial conclusion that the administrative decision was erroneous is not sufficient." *State v. Ford,* 110 Wn.2d 827, 830, 755 P.2d 806 (1988).

The material facts on the records do not support the Court's and Respondent's findings of acts and conclusion of law.

INSUFFICIENCY OF EVIDENCE TO SUPPORT THE FINDINGS

The court not only has authority, but also duty to secure the just. CR 1 Where the investigation, prosecution

and judicial functions repose in the same board, its members must be zealous in the recognition and preservation of the right to hearing by impartial triers of the facts and the courts must impose a most careful supervision of that element of the hearing. *New Jersey State Bd. of Optometrists v. Nemits*, 21 N.J. Super. 18, 37, 90 A.2d 740 (1952).

The court may take new evidence:

> The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if: (a) the agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record. (b) the court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that on or more of the parties...., or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency; (c) the agency improperly excluded or omitted evidence from the record;..." RCW 34.05.562 (2)

Due to the lack of any findings, conclusions or affirmative orders, the trial court must review the record unaided by any specific findings; and even in the absence of such findings, conclusions, or affirmative orders, which cannot be corrected by a remand to the administrative agency, the trial court can and must conduct a limited factual review, as required by RCW 34.05.554, .558, and/or 562 in order to ascertain whether or not it is left with the "'definite and firm conviction that a mistake has been committed [by the administrative agency].'" *Ancheta v. Daly*, 77 Wn.2d 255,

259-60, 461 P.2d 531 (1969); *Dept. of Ecology v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181.

The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions meet standard review by the court as prescribed in RCW 534.05.570(3) and (4). *Dept. of Ecology v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181. If there is evidence to support the agency's conclusion, it will be upheld. *State ex rel. Perry v. Seattle,* 69 Wn.2d 816, 420 P.2d 704(1966) Or if the agency acted arbitrarily, capriciously, or contrary to law, or the order is not supported by evidence that is substantial when viewed in light of the whole record before the court, or the agency has not decided all issues requiring resolution by the agency. RCW 534.05.570(3).

CONCLUSION

Based on the facts and existing authorities, the Court should deny the Respondent's Motion for Summary Judgement.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 4th of March, 2004

s/Benjapon Sakkarapope
Petitioner

FILED
MAR 5 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
IN AND FOR WHITMAN COUNTY

BENJAPON SAKKARAPOPE,	)	
	)	
Petitioner	)	Case No. 03-2-00168-4
v.	)	
	)	**OBJECTIONS TO**
STATE OF WASHINTON,	)	**FINDING OF FACT AND**
THE BOARD OF REGENTS,	)	**CONCLUSION OF LAW**
WASHINGON STATE	)	**RE: ORDER GRANTING**
UNIVERSITY	)	**RESPONDENTS'**
	)	**MOTION FOR**
Respondent.	)	**SUMMARY JUDGMENT**

GENERAL OBJECTIONS

Petitioner respectfully maintains the previous objections to the proceeding of Motion for Summary Judgment:

(A) Petitioner respectfully believes the sitting judge is not authorized to hear and make any ruling in the case since the Motion and Affidavit was filed on January 28, 2004. RCW 4.12.040 and .050

(B) Petitioner did not agree with Respondent and the Court to allow the sitting judge make any ruling in the case.

Petitioner makes objection to the statement, "Responsive pleadings of Petitioner filed February 5, 2004, (stricken as per memorandum opinion)." The statement is prejudiced. Petitioner does not waive any right to defend. The defense is not waived.

Petitioner makes objection to the proposed the findings of facts and conclusion of law:

(A) The facts are misleading and/or false, not based on the whole material facts on the agency's records, and prejudiced. The statements are not sufficiently supported by material evidence of facts.

(B) The conclusions of law are not supported by authority, are based on partial, misleading, and/or falsified facts, and are not drawn under color of law and existing authorities.

(C) The facts and conclusion are not fully within the Memorandum Decision issued by the court. Most statements are Respondent's claims; it is argumentative and unsupported by material facts of evidence in the agency records.

Petitioner makes objection to the Motion for Summary Judgment because the motion is the case-not-fully-adjudicated-on-motion. CR 56(d)

ITEMIZED OBJECTIONS

1. In July of 1999, Mr. Sakkarapope began trying to obtain a Master of Science in Statistics (M.S.) degree at Washington State University (WSU or University).

OBJECTION: Misleading and prejudiced. Mr. Sakkarapope declared a M.S. (Statistics) as a joint degree program option with his IIDP. A student can declare this option any time. He did not seek an alternative degree to his doctoral program.

2. WSU Graduate School policy requires all students to complete master's degrees within six years of the earliest credits used to satisfy the degree requirements.

OBJECTION: Misleading and false. A joint degree program option is governed by different rules. There are at least three kinds of program requirements, first master degree, second master degree, and a joint degree program.

3. Mr. Sakkarapope obtained the Graduate School's permission to count the credits he earned at WSU in 1994 toward his M.S. degree. Allowing the 1994 credits gave

Mr. Sakkarapope until the end of the spring semester to complete his M.S. degree.

OBJECTION: Misleading and false. No program completion deadline for a joint degree program option. A student may finish either doctoral or a joint program first at his own choice. The general requirements are not all necessarily applicable to a joint program option. *See* BS CR at 211-2.

4. Mr. Sakkarapope was aware of the need to complete the M.S. degree on time and he used that requirement to apply for financial aid for the spring 2001 semester, stating in his application that "This Spring 2001 semester is my last semester to complete a master[sic] degree in statistics."

OBJECTION: Misleading, false, and misrepresented. The statement in financial aid application was referred to a complete of coursework to fulfill the program requirement, not program completion deadline. No program completion deadline was ever established for Sakkarapope. The financial application was not under the Graduate School's policies and procedures and WSU's regulation, but a federal assistance to students from Asian financial crisis countries. Thailand was one of the countries on the list.

5. Mr. Sakkarapope did not complete his M.S. degree by the end of the spring 2001 semester. The department in which he was studying extended the deadline to August 2002.

OBJECTION: Misleading and false. No program extension request ever exists. The department did not establish any deadline for program completion.

6. The Dean of the Graduate School gave Mr. Sakkarapope permission to enroll for less than full-time (under-enroll) for one semester, fall 2000.

OBJECTION: Misleading.

Sakkarapope requested for authorizing part-time enrollment status starting with Fall 2000 semester. This authorization was to ensure that he has appropriate immigration status until

all legal procedures with regard to his case are complete. WSU has obligation to maintain his proper immigration status during administrative appeal proceeding. *See* CR 198. The full-time enrollment is not required when the student completes his coursework. If Mr. Sakkarapope ware a citizen, the enrollment would not be an issue.

7. Mr. Sakkarapope was not given permission to under-enroll for any other semester.

OBJECTION: Misleading and false. Mr. Sakkarapope's enrollment under the supervision of his academic and International Student advisors.

8. Mr. Sakkarapope did not enroll enough credits to be full-time for several semesters, including fall 2002.

OBJECTION: Misleading and false. After he completes his coursework, he has no need to enroll as full-time student. It is not required by INS. *See* 8 C.F.R. 214(f).

9. In fall 2002, Dr. Howard Grimes, Dean of the Graduate School, became aware that Mr. Sakkarapope was under-enrolled and had not completed his M.S. degree on time.

OBJECTION: Prejudiced. No completion deadline for program completion. Dr. Grimes has a personal interest in the dispute of IIDP appeal. After Dr. Grimes took the Dean Office, he began to abuse his authority in retaliation Mr. Sakkarapope. Such action is considered an official misconduct.

10. Dr. Grimes had the authority to decide whether Mr. Sakkarapope was allowed an extension of time complete his M.S. degree requirements.

OBJECTION: Misleading. Mr. Sakkarapope, his academic advisor and department chair did not request for time extension to complete his M.S. degree requirements. He did fulfill all program requirements, except a final examination to obtain a degree.

11. Mr. Sakkarapope's advisor asked Dr. Grimes for additional extension of time for Mr. Sakkarapope to complete his M.S. degree requirements. Dr. Grimes determined that Mr. Sakkarapope was not making

adequate progress toward his M.S. degree and was under-enrolled, and thus was in violation of Graduate School policy.

OBJECTION: Misleading and false. Mr. Sakkarapope's advisor did not ask Dr. Grimes for additional extension of time for Mr. Sakkarapope to complete his M.S. degree requirements. None of agency records to support such statement. Dr. Grimes has no authority to determine that Mr. Sakkarapope was not making adequate progress toward his M.S. degree. The authority was delegated to the department and his academic advisor. *See* Graduate School Policies and Procedures on page 17; *see* also MSPD at 4. None of the department's annual evaluations supports Dr. Grimes' claims. Sakkarapope's under-enrollment did not violate any of Graduate School policy since he already completed all coursework.

12. On December 18, 2002, Dr. Grimes granted the request for extension and set a new deadline for completion of January 27, 2003. The new deadline set by Dr. Grimes was reasonable. In setting the deadline, Dr. Grimes considered Mr. Sakkarapope's statement that he had been in Thailand on family business for part of the fall semester and the amount of work Mr. Sakkarapope must do to successfully complete the M.S. program.

OBJECTION: Misleading and false. There is NO deadline for completion. No request for time extension to complete the program was made. Mr. Sakkarapope did not make any request to Dr. Grimes and claim his family business to support his request. Dr. Grimes arbitrarily set such requirement and deadline to serve his personal creed in retaliation of Mr. Sakkarapope. Such action was outside of his authority. Dr. Grimes should be ashamed. Such deadline has no effect on Mr. Sakkarapope's student status. RCW 42.17.250.

13. Mr. Sakkarapope had the opportunity to complete the work necessary for the M.S. degree and graduate.

OBJECTION: Misleading and prejudiced. Except his academic advisor, no one shall make any comment or judgment on Mr. Sakkarapope's academic performance toward his degree program completion. Mr. Sakkarapope never received any unsatisfactory annual evaluation from his department. Dr. Grimes has no moral and academic authority to overrule any academic evaluation made by the department. Dr. Grimes as a professional shall stay away from the department academic business.

14. Dr. Grimes informed Mr. Sakkarapope of his academic deficiencies. Mr. Sakkarapope had an opportunity to respond to Dr. Grimes regarding his academic deficiencies. Mr. Sakkarapope was timely informed of the deadline and requirements to correct those deficiencies and complete his M.S. program.

OBJECTION: Misleading and false. Dr. Grimes has no moral and official authority to determine Mr. Sakkarapope's academic performance.

Dr. Grimes did not inform Mr. Sakkarapope of his academic deficiencies. The deadline and requirements to complete his M.S. program was arbitrarily made and outside of Dr. Grime's authority. No deadline of program completion was ever established by the department. Mr. Sakkarapope's academic advisor and his department never informed any academic deficiencies.

15. Dr. Grimes granted and set reasonable conditions and requirements for the extension and communicated those to Mr. Sakkarapope. Dr. Grimes required that by January 27, 2003, Mr. Sakkarapope was to complete his M.S. program (a short paper), apply for graduation in the M.S. program, and schedule his project defense. Mr. Sakkarapope only needed to successfully complete these tasks to be eligible to graduate and receive the M.S. degree.

OBJECTION: Misleading and false. Mr. Sakkarapope's right of freedom expression is guaranteed by the Constitutions. He has a right to choose what he wants to

write or do to fulfill his program of study under his academic supervision. This is also the University's policy of academic freedom. *See* BS CR 197-8 By imposing such rule and requirement, Dr. Grimes violates Mr. Sakkarapope's constitutional right. The deadline was arbitrarily set by Dr. Grimes. By selectively set for only Mr. Sakkarapope, Dr. Grimes commits a discrimination act in which is prohibited.

16. Mr. Sakkarapope refused to do any of the remaining tasks for completion of his M.S. degree. He wrote letters to Dr. Grimes indicating he would not comply with the deadline, and stating that he did not think Dr. Grimes had the authority to set a deadline. However, Dr. Grimes, acting in his capacity as Dean of the Graduate School, had the authority to make this decision and did so according to Graduate School policies and procedures.

OBJECTION: Misleading and false. Dr. Grimes has no authority to create a rule. Any graduate school rules and policies must be established by a ruling-making body, the Graduate Studies Committee. Dr. Grimes is an administrator who has duties to administer the rules and policies. *See* Faculty Manual page 10; BS CR at 176; Graduate School Policies and Procedures on page 2.

Mr. Sakkarapope did not refuse to complete his degree program, but he refused to follow the arbitrary and capricious action made by Dr. Grimes . *See* Faculty Manual on page 25-6, 29-32; BS CR at 180-5.

17. On January 28, 2003, Mr. Sakkarapope had not accomplished any of the remaining tasks to earn his M.S. degree. Dr. Grimes then directed the Graduate School and Registrar to dismiss Mr. Sakkarapope from the M.S. program. He was not enrolled in any other program at WSU, and on January 31, 2003, WSU terminated his enrollment at the University.

OBJECTION: Misleading, arbitrary, retaliation, misconduct by Dr. Grimes. While Mr. Sakkarapope was out of the country, Dr. Grimes began gathering information about Mr. Sakkarapope. Such termination was already initially made

on 10/22/02 without any notice of cause to Mr. Sakkarapope and the department. *See* CR 288-291, 296. Dr. Grimes has no authority over Mr. Sakkarapope's academic matter.

18. WSU's dismissal of Mr. Sakkarapope from his M.S. program was an academic dismissal.

OBJECTION: False. None of the above claims are academic matter. It is obvious that the above claims are related to rules and procedures arbitrarily imposed by Dr. Grimes. Mr. Sakkarapope never received any unsatisfactory annual evaluation of his academic performance toward a degree completion.

19. Dr. Grimes used his academic expertise and experience to make a determination in accordance with WSU policy that Mr. Sakkarapope was unlikely to successfully complete the M.S. program. Dr. Grimes made his decisions honestly, in good faith, and with due consideration of the facts and circumstances regarding Mr. Sakkarapope.

OBJECTION: False, prejudiced, arbitrary and capricious. Dr. Grimes is a faculty member in the School of Molecular Biosciences. His expertise has nothing to do with Mr. Sakkarapope's academic program. The claim, "Dr. Grimes made his decisions honestly, in good faith, and with due consideration of the facts and circumstances regarding Mr. Sakkarapope," is false, prejudiced, arbitrary and capricious, as well as lack of supporting evidence. The evidence on the agency certified records do not support such statements. *See* CR at 669; *see* also MSPD at 3-7.

20. Mr. Sakkarapope presented no admissible evidence demonstrating a genuine issue of material fact concerning whether WSU breached his educational contract or whether WSU deprived him of due process of law when it dismissed him from the M.S. program.

OBJECTION: False. By not commence an adjudicative proceeding, a hearing, either before or after such dismissal, it is obviously evidenced by the agency records. Such dismissal has deprived Mr. Sakkarapope's due process of

law. *See* MOMDMSJ. The agreement between Mr. Sakkarapope and his academic advisor constitutes his educational contract. Mr. Sakkarapope filed additional agency records on February 6, 2004 stricken by this Court. More records were quashed by this Court.

21. WSU did not breach its educational contract with Mr. Sakkarapope by dismissing him from the M.S. program when he refused to complete the program after having been given an opportunity to do so.

OBJECTION: False. Mr. Sakkarapope did not refuse to complete his program, but Dr. Grimes' misconduct and retaliation. Dr. Grimes' decisions and actions with unpublished rules and procedures have no effect on Mr. Sakkarapope's student status. RCW 42.17.250.Arbitrary and capricious decisions and actions made by Dr. Grimes.

22. On March 24, 1999, the Graduate School approved Mr. Sakkarapope's petition to attempt to obtain an Individual Interdisciplinary Doctoral Degree. This particular doctoral program is housed in the Graduate School.

OBJECTION: Misleading. The Graduate School did not approve Mr. Sakkarapope's IIDP program of study, but the Graduate Studies Committee.

23. The doctoral program required a candidate to take and pass a preliminary examination. On February 11, 2000, Mr. Sakkarapope had completed and failed both the written and oral portions of the preliminary examination.

OBJECTION: Misleading and false. Mr. Sakkarapope was informed he failed the examination. To date, Mr. Sakkarapope have not yet seen the examination on the portions that he was informed he failed. The University released the written examination only on the portion he received a passing grade. Nothing in the agency's records demonstrating that Mr. Sakkarapope actually failed the examination. The Court quashed the subpoena on January 16,

2004 of which the examination was part of the subject of the subpoena.

24. Mr. Sakkarapope protested the outcome of the examination and requested the Graduate School review it. The Graduate School Dean, Dr. Karen DePauw, had the matter investigated and reviewed by the faculty and a faculty committee. Based on that investigation and information, she decided to affirm Mr. Sakkarapope's failure and dismissed him from the doctoral program.

OBJECTION: Misleading and false. The examination in dispute has never been reviewed by any independent faculty committee who has expertise in Mr. Sakkarapope's academic areas of study. Dr. Hill, Assoicate Dean, is a faculty member in Chemistry. His academic expertise has nothing to do with Mr. Sakkarapope's academic areas of study. Dr. Hill was not authorized to make any academic review under the adjudication of rights and responsibilities, the Graduate Student Code. *See* BS CR at 167. The CGSRR, chaired by Dr. Grimes had no expertise in Mr. Sakkarapope's academic areas of study and did not conduct any hearing as described in the adjudication of rights and responsibilities, the Graduate Student Code, on page 8-9. *See* BS CR at 167-8. The CGSRR arbitrarily entered a recommendation of September 19, 2000. None of the records under the CGSRR's review are on the certified records. Also, this Court quashed the subpoena on January 16, 2004 of which the records are the subject of the subpoena. Dr. DePauw arbitrarily entered the decision with non-academic basis. Nothing in the records supports the integrity of such claim and academic evaluation.

25. Mr. Sakkarapope requested the decision be reviewed by then Interim Provost Dr. Ronald Hopkins, as provided in the Graduate School's policies and procedures. Dr. Hopkins reviewed the matter and issued a final decision letter based on his review. That decision letter was provided to Mr. Sakkarapope on February 1, 2001 by mailing it to Mr. Sakkarapope at his proper address. It is undisputed that Mr. Sakkarapope timely received that

letter. The letter specifically advised. Mr. Sakkarapope that this decision represented the University's final decision.

OBJECTION: Misleading and inaccurate. Mr. Sakkarapope appeal before the Interim Provost under the adjudication of rights and responsibilities as described in the Graduate Student Code on page 9. *See* BS CR 168. Dr. Hopkins did not conduct any review and nothing in the certified records shows any documents he obtained and used as the bases of his decision of February 1, 2001

OBJECTION: The February 1, 2001 decision is not necessarily constituted an agency final decision. *See* MOMDMSJ.

26. Mr. Sakkarapope did not present admissible evidence or authority that he did not have to file a Superior Court appeal of a final agency decision within 30 days after he received the decision.

OBJECTION: False. The statute of limitation was tolled. Mr. Sakkarapope had filed a Petition for Review within 30 days after the last administrative remedy sought.The authorities exist and they are standard authority that a professional lawyer should know, at least by common sense. *See* MOMDMSJ.

27. Mr. Sakkarapope filed the Petition for Review in Whitman County Superior Court of WSU's action dismissing him from his doctoral program more than 30 days after he received the final agency decision mailed February 1, 2001. Mr. Sakkarapope's appeal was filed more than 30 days after he received the University's written rejections of his efforts to have the decisions reviewed by others, including the Board of Regents.

OBJECTION: False. Mr. Sakkarapope filed an application for adjudicative proceeding pursuant to RCW 34.05 on February 23, 2003, and a reconsideration request on June 12, 2003. The February 1, 2001 decision is a decision made by the Interim Provost under the Graduate Student Code, and not necessarily constituted an agency final decision. *See*

MOMDMSJ.The statute of limitation was tolled. Mr. Sakkarapope had filed a Petition for Review within 30 days after the last administrative remedy sought. The authorities exist and they are standard authority that a professional lawyer should know, at least by common sense. *See* MOMDMSJ.

28. On March 14, 2002, at Mr. Sakkarapope's request, the Unviersity scheduled a Student Records Committee (SRC) to review the completeness and accuracy of his educational record that had been provided for his review under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. pt. 99 (FERPA). The SRC held a Brief Adjudicative Proceeding on March 27, 2002, and reviewed M. Sakakrapope's records pursuant to WAC 504-21-040.

OBJECTION: False. The SRC did not review any completeness and accuracy of Mr. Sakkarapope's educational record. *See* CR 433-55. Mr. Sakkarapope did not request for review of such completeness and accuracy, but the full disclosure of the requested records.

29. On April 5, 2002, the SRC issued an initial order in the matter and mailed that order to Mr. Sakkarapope at his proper address. It is undisputed that Mr. Sakkarapope timely received that letter. In that order, the SRC determined that Mr. Sakkarapope had been provided his entire educational record, except for some of his records from a Department of Agricultural and Resources Economics file. The SRC appended those records to its order. The decision letter stated that "with the inclusions in his letter, the University has fully complied with your request for the release of [your] educational records under FERPA." The decision also contained an express statement that Mr. Sakakrapope could come in and review his records. It also clearly informed him that under WAC 504-21-080, he had the right to submit a written view of the records to the Provost.

OBJECTION: Misleading and/or false. The SRC did not determine that Mr. Sakkarapope had been provided his entire educational record, except for some of his records from a Department of Agricultural and Resources Economics file. *See* CR 433-55. After April 5, 2002, the University still released some additional records via Public Records Request. Mr. Sakkarapope did not request for viewing the records at any University's offices, but he requested for a copy of such records for inspection and review.

30. On September 23, 2002, Mr. Sakkarapope asked for review of the decision by the current Provost, Dr. Robert Bates. Dr. Bates reviewed the records and the initial order, and issued a final decision letter that was mailed to Mr. Sakkarapope at his proper address on November 6, 2002. It was undisputed that Mr. Sakkrapope timely received that letter. The November 6, 2002, final decision letter affirmed that SRC's initial decision and clearly informed Mr. Sakkarapope that he could review his education record at the Graduate School and the Department of Agriculture and Resources Economics. The letter also contained an express notice that this was the University's final decision, and a notice of Mr. Sakkarapope's right to appeal WSU's final decision to the Superior Court within 30 days in accordance with RCW 34.05.514 and .542.

OBJECTION: Misleading and/or false. The statute of limitation in regard to the dispute of educational records is governed by FERPA. The FERPA matter is under jurisdiction of the FPCO and federal court. Mr. Sakkarapope timely filed a complaint with the FPCO on September 27, 2002. The statute of limitation did not run.

31. Mr. Sakkarapope's Petition for Review of that decision was filed with the Whitman County Superior Court on July 23, 2003, more than 30 days after the received the decision letter.

OBJECTION: False. The statutes of limitation of the subject matters of IIDP. M.S. and FERPA did not run. *See*

MOMDMSJ. Mr. Sakkarapope filed a petition for review with the court within 30 days after the last administrative remedy sought.

32. Mr. Sakkarapope, wishing to initiate a public records dispute, included in public records dispute in his Petition for Review of the agency's actions, requesting relief under the Administrative Procedures Act, RCW 34.05.

OBJECTION: False and misrepresented. Nothing in the PFR indicates Mr. Sakkarapope asks the Court to review the matter of Public Records, and request relief under RCW 34. 05

33. Mr. WSU is prejudiced by the public records dispute before the Court as an administrative appeal because an appeal of an agency action is based on the record, and WSU is unable to present new evidence, including witness of affidavits in defense of its actions and responses to Mr. Sakkarapope's public records requests.

OBJECTION: False; unsupported by evidence and authority. *See* MOMDMSJ.

CONCLUSION OF LAW

1. No genuine issue of material fact exists in this action and WSU is entitled to a judgment as a matter of law.

OBJECTION: False. At the conclusion of the February 6, 2004, it was determined that the Court found some genuine issues. No hearing was conducted prior to or after the dismissals made effective. The requirements of due process of law were not met. *Shirley Bowing v. Board of Trustee of Green River Community College,* 85 Wn.2d 300.

2. The Court can review only final agency actions or orders under the Administrative Appeals Act. The only final agency actions or decisions set forth in the Petition for Review are the appeal of Mr. Sakkarapope's dismissal from his doctoral program, the appeal of Mr. Sakkarapope's dismissal from his M.S. program, and the order entered November 6, 2002 by the agency regarding the accuracy and completeness of the educational records provided to Mr. Sakkarapope.

OBJECTION: Misleading and not meet the definition of agency final decision. The decisions were cumulative through the agency's administrative decision process. Those decisions made by officials are the agency final decision. The title of the case here is clear: Benjapon Sakkarapope v. Board of Regents, not individual officials who made such decisions. The Administrative Appeal Act is error. Mr. Sakkarapope did not appeal the accuracy and completeness of the educational records.

3. This Court lack subject matter jurisdiction over the appeal of the November 6, 2002, final decision following a Brief Adjudicative Proceeding held March 27, 2002, to determine the accuracy and completeness of the educational records as provided to his pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. pt. 99 (FERPA), and WAC 504-21-040. Mr. Sakkarapope filed his judicial appeal beyond the statute of limitations set forth in RCW 34.05.

OBJECTION: False. The statute of limitation is governed by FERPA. The statute of limitation is tolled. Mr. Sakkarapope filed a complaint with the FPCO within 180 days as of the April 5, 2002 decision. A reconsideration is optional. On February 24, 2004, Mr. Sakkarapope filed a complaint before the U.S. District Court, Eastern District of Washington, after he received a final decision by the FPCO in January 2004.

4. This Court lacks subject matter jurisdiction over the February 1, 2001, final agency action dismissing Mr. Sakkarapope on academic grounds from his doctoral program. Mr. Sakkarapope filed his judicial appeal of that agency action beyond the statute of limitation set forth in RCW 34.05.

OBJECTION: False and not supported by material facts of evidence and authority. The statute of limitation is tolled until the last administrative remedy sought. The February 1, 2001 decision was not the agency final decision. No due process of law was afforded. The claim has no merit on

material facts. The last administrative remedy sought was on June 12, 2003. *See* CR 793-5.

5. WSU's decision dismissing Mr. Sakkarapope from his M.S. program on academic grounds was not arbitrary and capricious.

OBJECTION: False; insufficient material evidence supported. The agency's records demonstrate otherwise. The material facts of evidence on the certified records clearly indicate that Dr. Grimes acted arbitrary and capricious. *See* MSPD at 3-8, MOMDMSJ, CR 669, 288-96.

6. WSU afforded Mr. Sakkarapope all process due before dismissing him on academic grounds from his M.S. program.

OBJECTION: False; unsupported by material evidence and authority. The lack of evidence in the certified records indicating the agency conduct any hearing before or after such dismissal shows that agency did not meet the standard of due process of law. Mr. Sakkarapope's right of due process of law has been deprived.

7. Mr. Sakkarapope did not meet his burden of demonstrating the invalidity of WSU's actions dismissing him from the M.S. program. WSU's academic dismissal of Mr. Sakkarapope from the M.S. program should be affirmed.

OBJECTION: False; insufficient material evidence supported such academic dismissal. The pleadings and the material evidence in the agency records sufficiently demonstrate Dr. Grimes' misconduct and retaliation act. *See* CR 669.

The actions taken by Dr. Grimes itself constitute sufficient evidence that the dismissal was not grounded on academic reason. No records support Mr. Sakkarapope received unsatisfactory annual evaluation of progress toward program completion.

8. Mr. Sakkarapope's dispute regarding WSU's responses to his public records requests should be filed pursuant to

RCW 42.17.340(1). It is therefore not properly before this Court and should be dismissed without prejudice.
OBJECTION: False; unsupported by material evidence and authority. No authority supports any adverse effect on the party. No authority demonstrates the incorporated is not proper. No authority demonstrates that the incorporated is prohibited. The statement is simply a claim with no merit.

ORDER

The orders do not sufficiently support by authorities and material facts of evidences. All claims of facts and conclusions of law are argumentative and unsolved, and unsupported by material facts in the certified records. Discoveries and agency records are not yet fully on filed with the Court. The two orders related to the agency records and discovery proceeding in dispute are in the Appellate Court proceeding since January 22, 2004. Such conditions do not meet the standard of CR 56(c) to enter summary judgment in favor of Respondent.

The agency's decisions lack material facts of evidence in the certified records. The agency either did not fully certify the record pursuant to RCW 34.05.566(1) or fail to prepare or preserve an adequate record. Such conditions are subject to remand a matter to the agency with directions that the agency conducts fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs. RCW 34.05.562(2).

DATED this 5th of March, 2004

s/Benjapon Sakkarapope
Petitioner

FILED
MAR 4 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

THE SUPERIOR COURT OF THE STATE OF WASHINGTON,
IN AND FOR WHITMAN COUNTY

BENJAPON SAKKARAPOPE,	)	
	)	
Petitioner	)	Case No. 03-2-00168-4
v.	)	
	)	**MOTION TO CALL**
STATE OF WASHINTON,	)	**FOR ATTENTION TO**
THE BOARD OF REGENTS,	)	**PENDING**
WASHINGON STATE	)	**SUPPLEMANTAL**
UNIVERSITY	)	**JURISDICTION RE:**
	)	**PARAGRAPH 3B OF**
Respondent.	)	**PETITION FOR**
	)	**REVIEW**

MOTION

COMES now, Petitioner, and is calling the Court for attention. A motion for supplemental jurisdiction over the decisions and actions at issues as described in the Paragraph 3B of Petition for Review was filed with the U.S. District Court on March 4, 2004 pursuant to 28 U.S.C. §1367.

On February 24, 2004, Plaintiff, Mr. Sakkarapope, filed a compliant against the Board of Regents, Washington State University, and the Secretary of the U.S. Department of Education, with the U.S. District Court, Eastern District of Washington, Case No. CV-04-0074-LRS. The claims arise from Washington State University's decisions and actions of April 5, and November 6, 2002, in regard to FERPA, 20 U.S.C. § 1232g; 34 CFR 99, in which the U.S. District Court has original jurisdiction.

On March 4, 2004, the Plaintiff filed a motion before the U.S. District Court to exercise supplemental jurisdiction over the Petition for Review on the portion of Paragraph 3B in which Respondent attempted to misrepresent the Petition for Review and this court does not make distinction between the two separate jurisdictions.

The Petition for Review on the portion of Paragraph 3B is part of the complaint filed with the U.S. District Court. Both cases are grounded on the same agency's records of evidence. The state court has jurisdiction over a procedural matter of brief adjudicative proceedings under the APA as to that the agency adopted the proceeding to conduct a hearing in compliance with FERPA. The state court does not have jurisdiction over the subject matter of the decisions and actions in compliance with FERPA.

Therefore, Petitioner respectfully requests that this Court shall not make any further ruling in regard to the decisions and actions at issues as described in the Paragraph 3B of Petition for Review as to pending for the supplemental jurisdiction. These decisions and actions include the brief adjudicative proceeding of March 27, 2002, the April 5, 2002 decision made by the SRC, and the November 6, 2002 decision made by Provost Bates as well as other issues related to Sakkarapope's education records in dispute under FERPA.

DATED this 4th of March, 2004.

s/Benjapon Sakkarapope
Petitioner

430 NE Oak #2
Pullman, WA 99163
Phone/Fax 509-332-8911

September 23, 2002

Dr. Robert C. Bates, Provost
The Office of the Provost,
422 French Adm. Bldg.,
PO Box 641046,
Washington State University,
Pullman, WA, 99164-1046

Dear Dr. Bates:

This letter serves as my written petition for a review of the Student Records Committee (SRC)'s decision of April 5, 2002, that "the University has fully complied with your request for the release of education records under FERPA." I have made requests for my education and public records of the preliminary examination, the appeals under the Graduate Student Code, and the hearing proceedings. To date, I have not yet fully and completely received the requested records as well as documents and evidences justifying the University's decisions. No clarification and explanation was provided. I believe the University officials were afforded sufficient time to demonstrate their good faiths and integrity of the decisions.

I request the University to invalidate the Student Records Committee's decision because I believe the decision was NOT legally and ethically justified. Most significant factual evidences were repeatedly stated in my correspondences copied to you. However, I would like to summarize these factual evidences to support my petition as following:

1. I believe the decision of April 5, 2002, was falsified, misled and misrepresented. I believe the decision was NOT made based on constructive evidence presented in the hearing proceedings:

1). Since the SRC was formed in response to my request of December 5, 2001 for a hearing, I believe the SRC has University's legal obligation to conduct the hearing with respect to my request as well as with clear, explicit decision and rationale. The request was for the University to consider six items as indicated in the document of March 21, 2002, and four petitions submitted to the committee. The SRC denied the request item #1 and did not mention any decision and conclusion of the proceedings in regard to the item # 2, 3 and 4 in the letter of April 5, 2002. The committee also did not state whether or not it considered these requests in the hearing proceedings and what rationale was behind its decisions. Mr. Backes and the SRC provided no clarification and explanation of the decision in responsive to my requests of June 22 and July 11, 2002. The committee simply ignored my requests. I believe the SRC did NOT fulfill its obligation and duties in compliance with FERPA.

2).The statement, "we investigated several specific records that may be in existence," implies that the committee did not thoroughly investigate all my requests with respect to the actual academic procedures and the appeals. I believe this implies that the committee made its judgment of "no education record exists" based on its prior perception and planned decision before the hearing took place. There are factual evidences supporting this implication:

a) The conclusion of item #1, "The committee has determined that no record of evaluator's comments exists now or ever existed," I believe this conclusion was clearly falsified and speculative. The factual evidences are:

(i) On July 3, 2002, almost three months after the decision of April 5, 2002, was made, the records of my answers and evaluator's comments on the

agricultural marketing portion were released via a public record request procedure, but the rest have not yet been released.

(ii) In his July 4, 2002, letter, Mr. Backes acknowledged that the records were incomplete. In response to my letter of June 22, 2002, he expressed his understanding that the missing pages were being disclosed. This suggests that Mr. Backes did not conduct the hearing in a professional manner.

(iii) In his June 7, 2002, email, Dr. Kenneth Duft indicated that he disposed the requested records. The University knows that no record can be destroyed or removed prior to the final disposition of the record request.

(iv) In Ms. Sandie Boyce's memorandum of June 7, 2002, Dr. Li-Ming Han was on leave. The on-leave status did not support or suggest the conclusion that no education exists, was true. No documentation and evidence of contact between the University and Dr. Han exists.

b) The conclusion of item # 2, "This committee has determined that no record of committee member comments exist now though they may have existed at one time (though in sole possession of the committee members who created the comments)," was misled, speculative and irresponsible. The factual evidence as presented above in 1.2)a)(i) indicates that the conclusion was falsified, speculative, and misled. This conclusive statement also lacks of supporting evidence from individual faculty members to verify the existence and the disposition of the records.

I observed the existence of the written comments with my own eyes. Where University's employees either as an individual or a committee, perform their official duties, any public and/or education record once created by them as part of their official duties is

subject to the Public Disclosure Act and/or FERPA. The individuals were obligated to comply with the relevant laws and regulations.

c) The conclusion of item #4, "This memorandum does not exist and is not maintained by the University," was falsified. In fact, this memorandum does exist and is maintained by the University; it was released by the public record request of May 31, 2002, which was disclosed on July 3, 2002.

d) The conclusions of item #6 and #7, "All records related to this appeal have been released to you...," were misleading unless the University officials actually did nothing in the appeal proceedings and the decisions were made based on their personal beliefs, preferences, and perceptions. If this is a case, such records do not exist.

Since Washington State University is a democratic, accredited, well-established and high reputation institution, I do not believe the University made such critical decisions based on no constructive evidence and justification. In fact, I have not received any record directly related to the appeal proceedings. Dr. Karen DePauw and the SRC provided no clarification and explanation responsive in this matter.

3).The SRC's conclusions were in questions. The statements were made with no clear, explicit interpretation of the education records. Such statements, "Much of what you request in your letter to this committee have to do with this lists of records, correspondence and evaluative criteria for which the University does not have a record," and "In most of the cases you cite in your letter, no education record exists," were speculative and not supported by factual evidences and records from the hearing proceedings. I believe the conclusions were based on personal beliefs, perceptions and preferences. How could the committee make a judgment whether an education record was created and

maintained, and whether an education record exists? Also, the statement, "no education record exists," does not give any constructive understanding of what records do not exist and what record were created, but not maintained.

2. I believe the conduct of the March 27, 2002, hearing was NOT appropriate and legitimate because the University clearly failed to comply with 34 CFR 99 in conducting a hearing:

1).The hearing of March 27, 2002, did not meet the minimum requirements for conducting a hearing in compliance with 34 CFR 99.22:

a). Mr. Backes was not eligible to conduct a hearing in compliance with FERPA, 34 CFR 99(c). Mr. Backes and Dr. Karen DePauw had a meeting to plan and "determine the appropriate way to respond to" my requests on March 5, 2002, and planned to send off the five emails to me (March 20, 2002). Dr.DePauw's email of March 5, 2002, to Ms. Linda Infranco and Lori Lamb also suggested that Mr. Backes had a meeting with Dr. DePauw and was involved with the withholding the release of the requested records on March 5, 2002. Dr. Karen DePauw was an officer directly involved in the dispute. These communications were made prior to the hearing of March 27, 2002. No other evidence supports that Mr. Backes conducted a full, fair hearing in a professional manner before the decision of April 5, 2002, was made. These incidences suggest that Mr. Backes had a direct interest in the outcome of the hearing of March 27, 2002.

b).The hearing of March 27, 2002, did not meet the minimum requirement for conducting a hearing under 34 CFR 99.22(d). The University knows that English language is my second language. By state laws and university ethical obligation, the University shall fully facilitate and accommodate my language

disadvantage in presenting evidence to the hearing with a full and fair opportunity. I have an interest to have an attorney and advocates spoken on my behalf at the hearing and where it is appropriate.

In fact, Mr. Backes by the advice and instruction of the Office of Attorney General (as cited in the hearing of March 27, 2002) imposed a rule that:
"(1) In the March 14, 2002, letter, "An advisor of your choice may accompany you to this hearing, but that person is not allowed to address the committee directly," and
(2) In the March 20, 2002, letter, "The advisor is allowed to give you advice during the hearing, but is not permitted to directly address the committee or advocate on your behalf."

I made a written objection to this rule prior to the hearing and with my petition#1. The University denied my objection and petition #1. These incidences clearly show that the University did not comply with the regulation and violated the right of the student.

2). The University failed to comply with 34 CFR 99.10(c). The University denied my request before the SRC for a clear written interpretation of the definition of "education record" applied by Washington State University in accordance with WAC 504-21-030 and 34 CFR 99. Before the hearing, I made a clear written request for an interpretation of the definition of "education records." Mr. Backes stated in the hearing that the committee would not interpret the definition of the education records and provide no explanation in this regard (audio record and hand written notes released on June 10, 2002, can be used to verify this incidence). ALL previous requests for explanation and interpretation were also never answered.

It was my understanding that a committee to conduct a hearing under FERPA has a direct function of "reviews unusual request for information and for assisting in the interpretation of WAC 504-21." The committee denied the University's duty with no clear explanation of the reason why it could not perform the duty. Without considering a clear written interpretation of the definition against my requests of education records, how could the committee make a rationale, professional, and responsible decision that "the University has fully complied with my request"?

3. I also believe the conduct of the hearing of March 27, 2002, was NOT appropriate and legitimate because the University's Student Records Committee (SRC) chaired by Mr.Backes did not have adjudication to conduct a hearing under WAC 504-21-040 because:

1). At the time my request for a hearing was filed before the University on December 5, 2001, the University's Student Records Committee did not exist. The University already has a standing committee for the matter in place and delegates the functions of the Student Records Committee to this standing committee. The committee is known as "Registration and Records Committee" and as indicated in the University Committee Manual.

The University designates three functions of the five to the Registration and Records Committee: (i) "Reviews unusual requests for information and for assisting in the interpretation of WAC 504-21, University Policy on Student Education Records," (ii) "Hears appeals as defined in WAC 504-21-040," and (iii) "Acts in the capacity of a hearing panel as described in the Family Educational Rights and Privacy Act of 1974 and the Privacy Rights of Parents and Students published by HEW on June 17, 1976."

By a public record request, there is no such official record of termination of the Registration and Records Committee; therefore, the Registration and Records Committee was still legally and officially effective at the time my requests for education records and a hearing were filed.

In the hearing of March 27, 2002, Mr. Backes denied my petition #1 and stated the Registration and Records Committee was served for the other things, not for my request. I believe such statement was misled and misrepresented. I believe the University has one committee for every student in regard to this matter. I do not believe this University discriminates its practice to single out my case from the others.

Moreover, there is no evidence of official appointment by either the President or the Provost showing that the committee was designated with clear, specific function, authority and duties to conduct a hearing. I believe the University's Student Records Committee (SRC) did not have University authority to conduct such a hearing on behalf of the Registration and Records Committee. With these incidences, therefore, the hearing conducted by the Mr. Backes was NOT legitimate.
2). The RCW 34.05.491 (2) states "the reviewing officer must be one who is authorized to grant appropriate relief upon review." My petition #1 before the committee was denied. Mr. Backes could not provide me a copy of the University written authorization indicating that a member of the committee has authority over the Graduate School and the Office of the Provost before the hearing proceeded. Thus, this incidence indicates that the SRC did not meet the requirement to conduct a

review pursuant to RCW 34.05.482 through 34.05.491.

3). On March 11, 2002, I made a written petition for disqualification of a committee member. The University denied my petition and appointed Mr. Richard Backes to conduct the hearing in knowing that he was not qualified to serve on the committee in compliance with FERPA and RCW 34.05. The decision of April 5, 2002, was not legitimate.

4. I believe the University violated the student's right of the Graduate Student Code as stated on page 2, item #1, and failed to comply with RCW 42.17.250.

The University has duty to publish procedures. The University knows that a graduate student has a right to be governed by clearly stated rules, procedures, policies, and regulations. I believe the decision made by the SRC was not legitimate. RCW 42.17.250. In the hearing of March 27, 2002, the University failed to clearly state all rules, procedures and regulations to govern the hearing as well as the proceedings the SRC pursued before the hearing proceeded. Mr. Backes stated that the committee followed the instruction of the Office of Attorney General without publicly spelling out the instruction to the student. This also implies that the committee did not have sufficient knowledge and understanding of rules, procedures, and regulations it was applying. Since the instruction was not publicly disclosed to me before the hearing proceeded, the SRC conducted the hearing with unpublished rules and procedures. Indeed, the decision has no legal effect.

5. I believe the University and Mr. Backes did not conduct the hearing proceedings of March 27, 2002, with University good faith and integrity. The following factual evidences suggest the University attempted to violate relevant state and federal laws and regulations as well as it own rules, procedure and policies:

1). Dr. Karen DePauw has not fully and completely released the requested records since May 2000 and forwarded my requests to Ms. Lori Lamb on March 20, 2001. Ms. Lori Lamb released no record. Instead, Ms. Lamb imposed a public record request procedure on my education record request as a condition of releasing the requested records.

2). My request for a hearing before the University's Student Records Committee was filed on December 5, 2001 (WAC 504-21-040). The University did not process the hearing proceeding until March 4, 2002, which was three months later.

3). On March 5, 2002, Dr. Karen DePauw and Mr. Richard Backes with other officials had a meeting to plan for conducting the hearing of March 27, 2002. Dr. DePauw emailed the President's secretary (Ms. Linda Infraco) and other officials in this regard, including Ms. Lori Lamb to suggest that "we should not respond individually or collectively to his letters until we hear from Steve."

4). On March 5, 2002, Ms. Kristen Pauli notified me a pending of the release of the requested records due to the hearing. I believe Ms. Pauli knew that both proceedings are independent and the hearing proceeding is not a condition of releasing of the clear, explicit education records.

5). On March 20, 2002, Mr. Backes emailed Dr. Karen DePauw "if you (she) had sent off those five emails to him."

6). On March 27, 2002, Mr. Backes conducted a hearing with only one party. I do not believe the hearing proceedings constituted a fair hearing. No evidence shows that the SRC conducted other appropriate proceeding in regard to my requests.

7). On April 5, 2002, the SRC made its final decision and released one additional record as indicated in my letter of June 22, 2002. No evidence supporting the decision was disclosed.

8). On May 8, 2002, Senior Assistant Attorney General Antoinette Ursich reaffirmed the decision of April 5, 2002.

9). On May 20, 2002, Ms. Lori Lamb closed the matter based on the SRC's decision of April 5, 2002.

10).By a public record request, the University released additional records after April 5, 2002, as stated above.

I believe these evidences suggest the University officials conspired and abused their University authority to withhold the records and close the matter regardless of violations of state, federal laws and regulations.

With the factual evidences and the inclusions above, I strongly believe that the University has **NOT** fully complied with my requests for the release of education records under FERPA and other relevant laws and regulations. Therefore, I request the University invalidate the Student Records Committee's decision and immediately pursue appropriate procedures to resolve the matter and provide proper remedies.

I request you consider my request in a timely manner. I also request you provide explicit explanation and rationale with your decision. In such case that this will take time longer than 10 working days, I request the University notify me when I will receive the University's decision and explanation. All relevant correspondences were copied to you; I believe they are already in your files as well as Mr. Backes', Ms. Lamb's, and Ms. Pauli's files. If you require additional information and they are not able to facilitate you, please feel free to contact me in writing.

In addition, I request the University provide explicit written clarification and explanation to all issues addressed in all my correspondences where Dr. Karen DePauw and Ms. Lori Lamb as well as other related University officials have not fully and completely fulfilled their obligations. I also request the University immediately, fully, and completely release the requested public and/or education records.

In such a case that the requested records were discarded, removed or missing from the files or what the University actually created in the examination and appeal processes, either parts/portions or whole records, I request you provide details and nature of such records and incidences, including date, time, place, and names of the officials who had custody of the records when the incidences took place. No record in regard to the matter shall be removed, discarded, or destroyed before all relevant proceedings are fully complete.

Finally, I request the University inform me all other internal administrative reviews available in regard to this matter as well as the preliminary examination and the appeals under the adjudication of rights and responsibilities, the Graduate Student Code. This information also includes all other administrative relief available and time limits. I reserve my right to pursue all avenues available in a timely manner upon a full, complete release of the requested documents for inspection and reviews.

Thank you for your consideration.

Sincerely,
s/Benjapon Sakkarapope
Benjapon Sakkarapope
cc: The President
The WSU Board of Regents
The Office of Washington State Governor
The Secretary of the U.S. Department of Education.

430 NE Oak #2
Pullman, WA 99163
Phone/Fax 509-332-8911

November 10, 2002

Dr. Robert C. Bates, Provost
The Office of the Provost,
422 French Adm.Bldg.,
PO Box 641046,
Washington State University,
Pullman, WA 99164-1046

Dear Dr. Bates:

I received your decision of November 6, 2002. Unfortunately, I believe you provided me with misleading information and instruction. I also believe that you have violated my constitutional due process rights. This letter serves as my written objection to your decision of November 6, 2002, responsive to my request of September 23, 2002.

First, I am objecting to your statement, "You have no additional rights to appeal this decision within Washington State University." I believe you have violated my constitutional due process rights in making such official statement prohibiting me access to due process at this University. I believe you also know and understand the following facts that:

1. "The Provost and Academic Vice President is directly responsible to the President and serves in the chief executive officer's stead as requested."

2. "The President administers the policies approved by the Board of Regents" and has other functions as indicated in the Faculty Manual.

3. "Any University committee or individual shall be accorded the opportunity to present a direct appeal to the Board of Regents through this channel."
4. I also believe: (i) The University's final decision made by the Provost is a matter subject to a review by the President upon a petition. (ii) The University's final decision made by the President is a matter subject to a review by the Board of Regents upon a petition. (iii) The University's final decision made by the Board of Regents is fully-completely legally constituted an agency's decision and action and that is subject to a judicial review upon a petition.
5. The Graduate Student Code grants a graduate student's right that "To be governed by clearly stated and justifiable academic procedures, rules, and regulations."

In such case that these above statements are not accurate, I request you immediately provide me all accurately published documents in this regard with your interpretation and rationale.

These evidences indicate that I **DO have** additional rights to appeal your decision of November 6, 2002, within Washington State University. I believe you do not have absolute authority at this University. Therefore, your decision and action is subject to an appeal before the President and the Board of Regents. I am questioning whether you have deceived my understanding of my rights and constitutional due process rights. I am questioning your motive in this regard.

In such case that you made an error in making such statement, I request you notify me a corrected statement and decision with full, explicit explanation how such statement could be made by the University officer held a high experience and reputation.

Second, I am also objecting to your statement, "You may, within thirty days **of the date your receive this letter**, appeal

this decision to the Whitman County Superior Court in accordance with RCW34.05.514 and 34.05.542." I believe you know and understand the facts that:

1. "A petition for judicial review of **agency action** ... within thirty days **after the agency action**, but **the time is extended** during any period ...or **that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.** "
2. The University's final decision of November 6, 2002, made by you is not yet fully-completely legally constituted an agency's final decision and action since the two additional appeals have not yet been completed.

Therefore, it is my understanding that I may, within thirty days **of the date I receive a service of the agency action**, not of the date I receive your letter of November 6, 2002, appeal the agency action and decision. I am questioning whether you have deceived my understanding of my rights and constitutional due process rights. I am questioning your motive in this regard.

In such case that you made an error in making such statement of notification, I request you notify me a corrected statement and decision with full, explicit explanation how such statement could be made by the University officer held a high experience and reputation.

Third, I am currently in the process of obtaining all relevant documentation from the University. The University has not yet fully released all my requested education and public records for my inspection and review, which is necessary to my preparation for judicial review. I believe the University action of withholding the requested records with no explanation has significant effect to impair my ability and opportunity to obtain a fair judicial review. Therefore, this letter also serves as my written notification to the University that the time limit in accordance with RCW 34.05.542 and all

University's internal due process is extended upon the last date the University release the last requested record and/or the date the matter of the record disclosure is finalized.

I have repeatedly stated in my correspondences that "I reserve my right to pursue all avenues available in a timely manner upon a full, complete release of the requested documents for inspection and reviews."

Fourth, with regard to your decision affirming the Committee's decision of April 5, 2002, it is my understanding that you claimed three findings to form your decision. Unfortunately, your findings were provided with no constructive evidence and professional analysis against the evidences and issues I brought in the letter of September 23, 2002. Thus, I believe your finding claims are vague and have no merit:

1). I believe the finding, "the Committee was properly constituted and that it had authority to hear and decide your case," is not supported by the factual evidences I presented in the letter of September 23, 2002:

(a). The SRC did not exist at the time I filed a request for the hearing. The University's functions regarding FERPA were delegated to the standing committee, "Registration and Records Committee." The University provided me with no evidence of its termination prior to the time my petition was filed.

(b). Mr. Richard Backes was not eligible to conduct a hearing in accordance with 34 CFR 99.

(c). The conduct of hearing did not meet the requirements for conducting a hearing in compliance with 34 CFR 99.

You simply ignored all these facts. What were your evidences and rationale against the facts I presented to you? I request you provide explicit evidence, rationale and justification behind your conclusive finding. If you cannot, I believe your finding has no professional merit.

2). I believe the finding, "the hearing was conducted in accordance with the procedure authorized by WAC 504-04-

010(4)," is misleading. I believe you know and understand that:

a). The WAC 504-04-010(4) authorizes the University to conduct a hearing pursuant to FERPA to be a brief adjudicative proceeding.

b). The conduct of the hearing in compliance with FERPA must meet all legal requirements of 34 CFR 99, WAC 504-21, RCW 34.05 and other applicable laws and regulations.

c). The authorization of the proceeding is necessary, but shall not be the only reason to justify the legitimacy of the outcomes of the hearing. It is a necessity condition, but not a sufficient condition. It does not warrant the conducts and decisions of the Committee are ethically and legally justified.

Although you find the Committee conducted the hearing in accordance with the procedure authorized by WAC 504-04-010(4), you provided no evidence and analysis to justify whether the Committee fully and properly conducted the hearing as a brief adjudicative proceeding in compliance with RCW 34.05, 34 CFR 99, WAC 504-21 as well as all other applicable laws and regulations.

Therefore, I believe your finding is not sufficient to warrant that the Committee's decision of April 5, 2002, is legitimate and justified.

3). I believe the finding, "your educational file is accurate and complete," is irrelevant. In the letter of September 23, 2002, I did not ask you to consider or examine the accuracy and completeness of my educational file. My written petition was brought before the University to review and invalidate the Student Records Committee (SRC)'s decision of April 5, 2002, that "the University has fully complied with your request for the release of education records under FERPA." I do not see how the accuracy and completeness of my educational file can be used to justify the University's FERPA compliance. You also acknowledged in your letter

that I did not dispute the accuracy or truthfulness of my education record. Nonetheless, you still claimed the accuracy and completeness of my educational file, which is not relevant, to support your conclusion and decision. I request you demonstrate your rationale and justification in this regard. If you cannot do so, I believe your finding has no professional merit to support your decision.

Fifth, your finding brought up the important issues: (i) what "educational file" you were referring to, (ii) what content of the file is accurate, and (iii) what content of the file is complete. I request you provide the index and volume of the educational file you had examined and found it is accurate and complete in a timely manner.

I believe you know and understand that I have not yet received a full release of the requested education records. So, you acknowledged the fact that I have not yet file a petition before the University in regard to the accuracy or truthfulness of my education record. How could I ask you to examine the accuracy or truthfulness of my education record? To date, I still have not yet seen the important records and its contents. The focal issues are: where they are and why the University has not fully release them. **Since you already affirmed that my educational file is accurate and complete, I request you immediately release all the requested education and public records withheld for inspection and review.**

Additionally, I request you release all other documentation and evidence that you created, obtained and used in your review and rendering your decision of November 6, 2002. I believe you know and understand that they are "public records" subject to the Public Disclosure Act.

With the above facts and rationale, I urge you to review your decision and the accuracy and truthfulness of your official

statements. I also request you immediately, fully and completely release all the requested records above and responsive to all other public and education record requests as well as provide me clarification and explanation of your decision of November 6, 2002.

You are incomparably higher superior than me in all dimensions—authority, experience, and resources. Why did you direct me to challenge your authority and professional integrity in court? I am challenging you here, within the Washington State University's due process, to put all your constructive evidence and professional analysis upfront for inspection and review the truthfulness, integrity, completeness of your professional decision and action. If you cannot do it now, how could you do it in the witness stand?

This letter also serves as my written notification before you that any explanation, clarification, documentation/record in regard to your review and decision of November 6, 2002, released after I file an appeal before the President, the Board of Regents and/or applicable proceedings (where it is applicable) will be also considered/treated as the evidence of your intention, faith, and deliberately action to conceal, deceive and/or withhold the record/information to impair my opportunity to obtain a fair review in the appeal proceedings/judicial review. There is NO excuse for later discovery as to your confirmation that my educational file is accurate and complete as of November 6, 2002, as well as to your professional responsibility. It is also the responsibility of University's officials to maintain both original and copied versions of all records of my cases at WSU from my initial enrollment in the secured place for inspection, review and verification. I request you immediately reaffirm their responsibility in this regard if you have not done so.

If I do not receive a written response from you at the end of five business days, it is deemed that:

(i) You affirm your decision and all statements in the letters of November 6, 2002, with full consciousness, intention and understanding of its contents and consequences as to reflect, imply and/or represent the Provost's and the University's faiths in conducting its decisions and actions.

(ii) You deny my request with NO explanation and clarification and have NO willingness to demonstrate the Provost's and the University's good faiths in regard to the matters.

(iii) The denial is final and constitutes **a procedural exhaustion at the Provost's office** in this regard.

Finally, again, I would also like to notify the University that NO record, either whole or parts of the requested records, shall be removed, discarded or destroyed before: (i) all requested records are completely released and (ii) all further judicial proceedings are complete. The University officials and faculty members involved are obligated to maintain all the records they created and used as part of the adjudicative proceedings and the bases of their decisions for further review, inspection and examination.

If you have any question, please feel free to contact me in writing.

Sincerely,
s/Benjapon Sakkarapope
Benjapon Sakkarapope
cc: The President,
The WSU Board of Regents,
The Office of Washington State Governor,
The Secretary of U.S. Department of Education.

430 NE Oak #2
Pullman, WA 99163
Phone/Fax 509-332-8911

November 6, 2002

Dr. Howard Grimes, Interim Dean
The Graduate School
Washington State University,
Pullman, WA 99164

Dear Dr. Grimes:

To date, Washington State University has not yet provided a full, complete release of my education records regardless of the number of requests I made. My requests and correspondence include the letters dated April 19, May 1, May 4, July 12, November 6, December 14, **2000**, and March 15, **2001**, as well as February 28 and March 26, **2002**. You, the Dean of WSU Graduate School, made three attempts to release the records, February 12 and March 20, **2001**, and March 20, **2002**; unfortunately, the records were incomplete as I indicated in the letters of March 15, **2001**, February 28 and March 26, **2002**.

By the hearing of March 27, **2002**, in accordance with FERPA, the University's Student Records committee released one additional record with the decision of April 5, **2002**. However, the majority of the requested records were still withheld with no explicit explanation and basis. I also believe the committee conducted the hearing in violation of the WSU's Graduate Student Code and FERPA.

By a Public Records Request procedure, the records released on June 24, **2002**, were duplicated and I believe they were not at my request as I indicated in the July 2, **2002**, letter to Ms. Lamb.

I believe that you, as Interim Dean of WSU Graduate School and Chair of the IIDP, had not fully and completely released all my requested education records. You never fully and completely provided explanation and clarification of your official duties and decisions in regard to the examination and academic appeals. I believe how the University released the requested records to date indicates that you had failed to ensure that I receive copies of existing educational records in a timely manner responsive to the Interim Provost's order of February 1, **2001**. **To date, it has been longer than two years**. I have not yet received the entire records in regard to the preliminary examination and the appeals. You were afforded sufficient time to demonstrate a good faith and integrity of the University's decisions before your leaving.

I strongly believe that you have a direct obligation to release the records and have custody of the requested records because you were the Chair of the CGSRR and are Interim Dean of the Graduate School; therefore, you have custody of my education records. Therefore, I believe you have both ethical and legal accountabilities to your professional actions and decisions in regard to my case at WSU. I request you fully and completely release all the requested records. Again, I also request you provide written explanation and clarification in response to all my requests filed before you from April 19, **2000**, to date.

Sincerely,
s/Benjapon Sakkarapope
Benjapon Sakkarapope
cc: Dr. V. Lane Rawlins, WSU President,
Dr. Robert C. Bates, WSU Provost,
The WSU Board of Regents,
The Office of Washington State Governor,
The Secretary of U.S. Department of Education.

430 NE Oak #2
Pullman, WA 99163

November 17, 2002

Dr. Howard Grimes, Interim Dean
The Graduate School,
324 French Administration Building,
Washington State University,
P.O.Box 641030,
Pullman, WA 99164-1030

Dear Dr. Grimes:

I received the Provost's letter dated November 6, 2002, indicating that my **"education file is accurate and complete,"** and restated that **"you are welcome to pursue your own files at the Graduate School....at any time."** This letter serves as another written follow-up of my requests for my education and public records filed directly with you, the University.

I had filed many written requests with the former Dean of the Graduate School and the former Chair of the IIDP, (Dr. Karen DePauw), the Interim Provost (Dr. Ronald Hopkins) and Public Records Officers. My requests and correspondence include the letters dated April 19, May 1, May 4, July 12, November 6, December 14, **2000**, and March 15, **2001**, as well as February 28 and March 26, **2002**. To date, the Graduate School, Washington State University has not yet provided a full, complete release of my education records regardless of the number of requests I made. It has been longer than two years. I have not yet received the entire requested records in regard to the preliminary examination and the appeals. No explanation and clarification was provided.

With Dr. Karen DePauw's letter dated March 20, 2001, and Dr. Ronald Hopkins's letters dated February 1 and December 13, 2001, Ms. Lori Lamb has never released any record on behalf of the Graduate School and the Interim Provost. Dr. Karen DePauw, the former Dean of the Graduate School, made three attempts to release the records, February 12 and March 20, **2001**, and March 20, **2002**; unfortunately, the records were incomplete as I indicated in the letters of March 15, **2001**, February 28 and March 26, **2002**.

By the hearing of March 27, **2002**, in accordance with FERPA, the University's Student Records committee released one additional record with the decision of April 5, **2002**. However, the majority of the requested records were still withheld with no explicit explanation and basis.

By a Public Records Request procedure (see the PRR#02-56, May 31, 2002), the records released on June 24, **2002**, were duplicated and they were not at my request as I indicated in the July 2, **2002**, letter to Ms. Lamb.

Dr.Karen DePauw had not fully and completely released all my requested education records and she never fully and completely provided explanation and clarification of her official duties and decisions in regard to the examination and academic appeals. I believe how the University released the requested records to date indicates that Dr. DePauw had failed to ensure that I receive copies of existing educational records in a timely manner responsive to the Interim Provost's order of February 1, **2001**.

In the absence of Dr. Karen DePauw, I strongly believe that you and the Graduate School have direct obligation to release the records and have custody of the requested records because:

1) You are in charge of the Graduate School. The IIDP is housed in the Graduate School. The procedures of the

preliminary examination and the adjudication of rights and responsibilities are under direct obligation of the IIDP and the Graduate School.

2) You were the Chair of the CGSRR. I believe you have full knowledge and responsibility to the CGSRR's proceedings and maintain all records in regard the proceedings. I believe you have both ethical and legal responsibilities and accountabilities to your professional actions and decisions in regard to my case at WSU.

Therefore, I request you proceed on the following:
1. You, as the Interim Dean of the Graduate School, fully and completely release all the requested records in compliance with FERPA and the Public Disclosure Act. I also request you provide written explanation and clarification in response to all my requests filed before the University from April 19, **2000**, to date, which was never provided. In such case you don't know what the requested records are, I ask you find all my requests from the Graduate School's and the Public Records Offices.
2. You, as the Chair of the CGSRR, fully and completely release all the requested records of the CGSRR procedures in compliance with FERPA and the Public Disclosure Act. My requests were filed with the Graduate School, Dr. DePauw, and with the Public Records Office, WSU. In such case that Dr. Karen DePauw and the Public Records Officers had never notified you, I ask you immediately obtain the requests from the Graduate School's and the Public Records' Offices.
3. You notify all the University's officials and faculty members involved the processes of the preliminary examination and the appeals their obligations to maintain all original and copied versions of the records created, maintained and used in their official duties. I also request you notify them to immediately release the requested records silent in their custody.

The University's officials and faculty members include:

1). The faculty involved in the preliminary examination procedures and appeal process:

Dr. Kenneth Duft, Dept. of Agricultural Economics

Dr. Phillip Wandschneider, Dept. of Agricultural Economics

Dr. Hong Holly Wang, Dept. of Agricultural Economics

Dr. Fred Inaba, Dept. of Economics

Dr. John L. Kling, Dept. of Finance

Dr. Li-Ming Han, Dept. of Finance

Dr. Harry Turtle, Dept. of Finance

Dr. Hao Zhang, Program in Statistics.

2). The University administration involved in the appeal process:

Dr. Karen DePauw, Former Dean of the Graduate School

Dr. Herbert H. Hill, Former Associate Dean of the Graduate School

Dr. Ronald H. Hopkins, Former Interim Provost

3). The CGSRR:

Dr. Howard Grimes, School of Molecular Biosciences and Interim Dean of the Graduate School

Dr. Sally Blank, Dept. of Kinesiology and Leisure Studies

Dr. James Harsh, Dept. of Crops and Soils Sciences

4). All other faculty and officials contacted by the persons in the list above in regard to the procedures of the preliminary examination, the appeal, and the CGSRR.

This letter also serves as my written notification before you and all others, as indicated above, involved in the preliminary examination and the appeals that any explanation, clarification, documentation/record in regard to the preliminary examination and the appeals released after I file an appeal for an academic review before the Provost or applicable proceedings will be also considered/treated as the evidence of your/his/her intention, faith, and deliberately

action to conceal, deceive and/or withhold the record/information to impair my opportunity to obtain a fair review in the appeal proceedings/judicial review. There is NO excuse for later discovery as to the Provost's confirmation that my educational file is accurate and complete as of November 6, 2002, as well as to your/his/her professional responsibility. It is also the responsibility of University's officials to maintain both original and copied versions of all records of my cases at WSU from my initial enrollment in the secured places for inspection, review and verification.

Finally, I request you provide a response and release the requested records in a timely manner. In such case that this will take time longer than five working days, I request you notify me with your estimate time and explanation. I reserve my right to pursue all avenues available in regard to the academic decisions and related matters in a timely manner upon a full, complete release of the requested records for inspection and reviews.

Sincerely,
s/Benjapon Sakkarapope
Benjapon Sakkarapope
cc: Dr. V. Lane Rawlins, WSU President,
Dr. Robert C. Bates, WSU Provost,
Dr. Charles W. Steger, VT President,
Dr. Karen DePauw,
The VT Board of Regents,
The WSU Board of Regents,
The Office of Washington State Governor,
The Secretary of U.S. Department of Education.

430 NE Oak #2
Pullman, WA 99163

November 25, 2002

Dr. Howard Grimes, Interim Dean
The Graduate School,
324 French Administration Building,
Washington State University,
P.O.Box 641030,
Pullman, WA 99164-1030

Dear Dr. Grimes:

This letter serves as my written notification of continuing circumstance of my graduate student status. Per my communications and correspondences with Dr. Karen DePauw, former Dean of the Graduate School, my graduate student status in the IIDP has been pending the outcome of the appeal process.

To my progress in the graduate studies, I have completed all requirement coursework for the program of studies. I have enrolled more classes than I need. Currently, I have made substantial progress in my doctoral research without the advisory committee's supervision due to the pending the outcome of the appeal process. My dissertation persistently continues regardless of the outcome of the appeal process.

I was recently returned to the University in this late Fall due to the death of a family member. Under unfortunate circumstance in the appeal process at Washington State University, the appeal process has been ongoing since then and not yet reached the final stage at the Board of Regents. Currently, the appeal is underway to the President's office. Also, I have no necessary class to take further, but academic research. Still, my status in the IIDP has been pending the

outcome of the appeal process. These circumstances lead me to an unfortunate condition that I have to enroll at the minimum requirement and below the normal course of study as an international student.

Therefore, this letter serves as my written notification to the University to assure that I have appropriate immigration status during the appeal process.

Finally, I reserve my right to pursue all avenues available in regard to the academic decisions and related matters in a timely manner upon a full, complete release of the requested records for inspection and reviews.

Sincerely,
s/Benjapon Sakkarapope
Benjapon Sakkarapope
cc: Dr. V. Lane Rawlins, WSU President,
Dr. Robert C. Bates, WSU Provost,
The WSU Board of Regents,
The Chair of the IIDP,
The Office of Washington State Governor,
The Secretary of U.S. Department of Education.

430 NE Oak #2
Pullman, WA 99163
Phone/Fax: 509-332-8911

February 6, 2003

Dr. Howard Grimes, Interim Dean
The Graduate School,
324 French Administration Building,
Washington State University,
P.O.Box 641030,
Pullman, WA 99164-1030

Dear Dr. Grimes:

I received your decision and action dated January 31, 2003.

This letter serves as my written objection to your action and decision dated January 31, 2003.

You not only did not respond to my written objection dated January 5, 2003, to your decision and action of December 18, 2002, but also took aggressive action and decision further to terminate my Spring 2003 enrollment. The action and decision dated January 31, 2003, indicates your deliberated decision and action in regard to the matter. I believe you have seriously and deliberately abused your official discretion.

As I indicated in my written objection dated January 5, 2003, your action and decision of December 18, 2002, were made with unpublished policies and procedures. You have fully acknowledged and understood that I have no obligation to follow your January 27, 2003, deadline. Neither my academic advisor/ the Program nor I did request for any extension of program completion. Such decision and action were solely initiated and made by you. This is NOT a matter

of whether I satisfied with your conditions. The decision and action were NOT legitimate and have no effect on my current student status in the programs. You also fully understand that any rule and policy established after my initial enrollment at the Graduate School, Washington State University, is not applicable to my case. Your decision and action dated December 18, 2002 and January 31, 2003, in regard to my program completion deadline have no effect on my current student status in the programs. RCW 42.17.250.

Therefore, I request you, Interim Dean of the Graduate School, Washington State University make a proper correction of your decision and action as well as my enrollment record, in accordance with accepted profession norm and legal obligation as well as WAC 504-21, FERPA, and 34 CFR 99. I also request you notify all recipients of your decisions and actions with a correction of my student and academic statuses at Washington State University in a timely manner.

In addition, I believe that a series of your decisions and actions since September 19, 2000, in regard to my case suggests you have intentionally abused your faculty and administrative authorities to serve your personal interest in the regard to the unresolved and ongoing matters while your official obligations and duties have not yet been fulfilled. With respect to:

1) The Faculty Manual, the faculty responsibilities,

2) The University policies and procedure for Administrative and Professional personnel,

3) The Graduate School Policies and Procedures,

4) The IIDP Faculty/Student Manual and the departmental policies in Statistics program,

5) The Graduate Student Code, and

6) Other relevant University policies, state and federal laws and regulations,

I request you review your decisions and actions on the following:

1. On September 19, 2000, you and the CGSRR made an academic judgment in regard to the preliminary examination without proper academic expertise in the academic disciplines underlying my program of study, Economics-Public Finance, Agricultural Economics-Agribusiness Finance and Finance-Financial Management. On January 24, 2003, President Joe King reaffirmed the accepted academic norm that a person shall not make any academic judgment where he does not have professional expertise. Based on University's publications, you, Dr. Blank, and Dr. Harsh have expertise in Molecular Biosciences--Biochemistry, Kinesiology—Muscle Physiology/Exercise Biochemistry, and Crop and Soil Sciences--Soil Chemistry, respectively.
2. The memorandum dated September 19, 2000, contains misleading and misrepresenting information in regard to my academic performance in the program as indicated in my correspondences with the Graduate School.
3. You and the CGSRR failed to conduct a formal adjudicative proceeding in compliance with WAC 504-04 and the Administrative Procedure Act. You and the CGSRR chose to operate the formal adjudicative proceeding with unpublished procedures. You as the Chair of CGSRR also knew that the decision and action under the CGSRR has no effect on my student status in the program. RCW 42.17.250.
4. You have withheld my education records under the CGSRR procedures and refused to provide explanation and interpretation of the records in violation of FERPA, 34 CFR 99.
5. You have withheld the requested public records under the CGSRR procedures in fully knowing that "It is a violation of the ethics law for state employees to intentionally conceal a record if they know the record is

required to be released under the public disclosure law, (RCW 42.17). This prohibition applies if the employee is under a personal obligation to release the record and the decision to withhold is not made in good faith (RCW 42.52.050)."

6. You made a memorandum of November 25, 2002, misrepresenting my student status at WSU. You took an opportunity when I was out of the country for my father-in-law's funeral. You ignored my request and refused to provide explanation and clarification as well as make proper corrections.
7. You withheld my enrollment registration for Spring 2003 semester due to "a Grad School Academic Deficiency," while I am not academic deficient according to the University's definition. You have full knowledge and understanding of the definition and its applicability. You ignored my requests and refused to provide explanation and clarification in this regard.
8. On December 18, 2002, you made an academic judgment in regard to my academic progress and program completion in Statistics Program while you do not have academic expertise in the academic area of my study. You also know that the authority was delegated to the academic department and the student's academic advisor, according to the Graduate School Policies and Procedures. Neither my academic advisor/the Program nor I did request for any extension of program completion. I believe you simply imposed the conditions of my program completion to serve your personal creed and interest as well as excuse yourself from fulfilling your official obligations. Such decision and action were solely initiated and made by you. You fully acknowledged my objection and the facts by providing no response to my written objection to your decision and action. Additionally, as the Interim Dean, I believe you are not authorized to make any new rule and policy, but

effectively administer and enforce the existing University policies and procedures.

9. You deliberately took further action and decision of January 31, 2003, to drop me from the graduate program at Washington State University and terminate my Spring 2003 semester enrollment while the department and the student's academic advisor did not ask you to do so. Your decisions and actions were based on unpublished rules, policies and procedures. I believe you know that I am a current student and fully eligible to enroll for this Spring 2003 semester at Washington State University. I have properly enrolled for this Spring 2003 semester since January 7, 2003. My graduate student status in the IIDP has been pending the further administrative proceeding and judicial review. Additionally, on January 24, 2003, President King and Provost Bates also acknowledged that a judicial review is inevitable. You and the Graduate School have obligation to assure that I have proper student and immigration statuses during the appeal process and the judicial proceedings.

I believe you have deliberately abused your discretion in regard to the above series of your decisions and actions. I request you immediately make a proper correction in regard to ALL your decisions and actions as well as offer a proper remedy for your accountability. I believe you are not authorized to conduct any official duty deviatory from accepted academic and profession norms.

This letter also serves as my notification to you, Interim Dean of the Graduate School, and the International Program, Washington State University to assure that I have proper student and immigration statuses during the appeal process and the judicial proceedings. The University shall assume all responsibilities for the consequences of the University's procedural error and/or misrepresentation in regard to the enrollment registration record as well as any decision and

action made by University's officials with unpublished policies, rules and procedures.

Due to the seriousness and urgency of the matter, I request you immediately make a proper correction of your decision and action as well as my enrollment record. I also request you offer a proper remedy for your accountability in this regard by 5:00PM on February 12, 2003. If you cannot do so, it is deemed that you intentionally refuse to make a proper correction in this regard with full knowledge and understanding of your official obligation and duties. This letter automatically serves as my appeal of your refusal before the Provost. I request you forward this letter with your decision to the Provost and assure that the Provost receives this letter by the end of February 12, 2003.

By 5:00PM on February 18, 2003, I request the Provost immediately consider this appeal on the following:

1) Invalidate Dr. Howard Grimes's decision and action dated January 31, 2003.
2) Order Dr. Howard Grimes to make a proper correction of his decisions and actions as I requested.
3) Review a series of Dr. Howard Grimes' decisions and actions as I indicated above, invalidate all improper/inappropriate decisions and actions as well as take other proper actions.

If I do not receive any evidence demonstrating my request has been honored accordingly by the end of February 18, 2003, it is deemed that the Provost officially and fully endorses ALL Dr. Howard Grimes' decisions and actions as well as refuses to take a proper action. This letter automatically serves as my written appeal of the Provost's refusal before the WSU President. I request the Provost forward this letter with the Provost's decision to the President and assure that the President receives this letter by the end of February 18, 2003.

I request the WSU President consider my appeal deemed denial by the Provost, and notify me what action the University has taken to make a proper correction in this regard by February 24, 2003. If I receive no response and action by the President at 5:00PM on February 24, 2003, it is deemed that the President officially and fully endorses ALL Provost's and Dr. Howard Grimes' decisions and actions as well as refuses to take a proper action. This letter automatically serves as my written appeal of the President's refusal before the WSU Board of Regents. I request the Secretary and the Board process my appeal with proper procedures for an agenda item submittal. My appeal for this matter before the WSU Board of Regents is fully and completely effective on February 24, 2003.

Finally, this letter is also faxed to your office. The original letter will be sent with a certified mail. If you have any question in regard to my request, please contact me in writing. Email or fax for urgent contact.

Thank you for your consideration.

Sincerely,
s/Benjapon Sakkarapope
Benjapon Sakkarapope
cc: Dr. V. Lane Rawlins, WSU President,
Dr. Robert C. Bates, WSU Provost,
The WSU Board of Regents,
Program in Statistics, IIDP,
Office of International Students and Scholars

430 NE Oak #2
Pullman, WA 99163

June 22, 2002

Richard A. Backes,
The University's Student Records Committee,
360 Lighty Student Services Building,
PO Box 641066,
Washington State University,
Pullman, WA 99164-1066

Dear Backes:

I received your letter of April 5, 2002, in regard to the University's Student Records Committee's decision with additional education records:

1). Four pages of the January 14, 2000, written examination questions.

2). Twelve pages of the sixteen pages of my answers to the January 14, 2000, written examination. **The pages 13 through 16 were missing.**

3). One page of the examination committee's memorandum of February 11, 2000.

4). Dr. Hill's letter of May 19, 2000.

5). The CGSRR's memorandum of September 19, 2000.

6). The Interim Provost's letter of February 1, 2001.

If the above list of documentation is different from what the University intentionally release to me, please immediately notify me any missing document and explanation.

I have reviewed the released public records in regard to all proceedings of the University's Student Records Committee. No released record shows materials of evidence the committee obtained for their deliberation. No record indicates the proceedings the Student Records Committee

pursued before and after the hearing of March 27, 2002. No record indicates the basis of the committee's decision of April 5, 2002. Washington State University is a well-established institution. The officials are obligated to conduct their official duties in a professional manner. The documentation in regard to the official duties was expected to be in place professionally.

Since no record supporting the official decision was disclosed, the basis of the committee's decision of April 5, 2002, was unclear and unverifiable. Therefore, I request the committee provide a written clarification of the decision of April 5, 2002, on the following:

1. What evidences were used as the basis of the committee's determination that "no record of evaluator's comments exists now or ever existed" and that "no record of committee member comments existed now though they may have existed at one time (though in sole possession of the committee member who created the comments)"? The determinations reflect the committee's speculation rather than constructive evidence.
2. Why did the committee search for my written examination in the Agricultural Economics Department? I am not a student in this department. My department is the IIDP and chaired by Dr. Karen DePauw.
3. What evidences were used as the basis of the committee's determination that the memorandum of January 26, 2000, "does not exist and is not maintained by the University"? This determination was unclear. Where a record does not exist, it cannot be maintained. Where a record is not maintained by the University, it implies that the record does exist.
4. Where the committee indicated "All records related to this appeal have been released to you...," was misled and unclear. I request the committee explicitly state what "All records" the committee referred to. Also, what evidences were used to reach such conclusion?

5. Where the committee determined that "No other records were created and/or maintained," was misled and unclear. Where a record was not created, it cannot be maintained. Where a record was not maintained, it implies that the record was created. I request the committee explicitly state what records were never created and what records were created, but not maintained by the University, with respect to the evidences obtained by the committee.
6. As stated "In most of the cases you cite in your letter, no education record exists," I request the committee explicitly and specifically indicates what education record exists and what record does not exist with respect to the evidences obtained by the committee.
7. As stated "Much of what you request in your letter to this committee have to do with list of records, correspondence and evaluative criteria for which the University does not have a record," I request the committee explicitly and specifically indicates what evidences were used as the basis of such determination that the University does not have a record.
8. In such case that the committee utilized personal experience and perception as the basis of the decision of April 5, 2002, I request the committee explicitly disclose whether Mr. Richard Backes, Mr. Barry Johnson and Ms. Helen Tupai had experiences in taking a doctoral preliminary examination at Washington State University or other institutions. How did the committee members' personal experiences play role in the decision of April 5, 2002?
9. With regard to my request before the hearing item # 2, #3 and #4, the committee did not inform me whether or not it considered the requests in the proceeding and the decision of April 5, 2002. I request the committee provide clarification and explanation of what procedure and conclusion the committee pursued in this regard.
10. With respect to my petition #3, the committee promised that the committee would get back to me after consulting

with the Office of Attorney General. The committee did not keep the promise. Also, in the decision of April 5, 2002, the committee did not inform me its decision in this regard. I request the committee provide clarification and explanation of what procedure and conclusion the committee pursued in this regard.

11. With respect to my petition #4, in the decision of April 5, 2002, the committee did not inform me its decision in this regard. I request the committee provide clarification and explanation of what procedure and conclusion the committee pursued in this regard.
12. The January 2000 written examination was a two-day exam. Where is my answer and evaluative comments to the first day examination? Where are my answer and evaluative comments to the second day examination page 13 through 16? With this incomplete releasing of the requested education records, I believe it is clear that the decision, "With the inclusions in this letter, the University has fully complied with your request for the release of education records under FERPA," is misled and not consistent with the facts.

I request a direct, explicit and complete clarification and explanation from the committee in a timely manner. If you have any question in regard to my request, please contact me in writing.

Sincerely,
s/Benjapon Sakkarapope
Benjapon Sakkarapope
cc: The President,
The Provost,
The Regents,
The Attorney General,
The Office of Washington State Governor,
The Secretary of the U.S. Department of Education.

Mr. Edward M. Opton, Jr.
University Counsel
The Regents of the University of California
Office of General Counsel
1111 Franklin Street, 8th Floor
Oakland, California 94607-5200

Dear Mr. Opton:

This is in response to your March 15, 1999, letter to this Office requesting our guidance on the University of California's (University) response under the Family Educational Rights and Privacy Act (FERPA) to a subpoena duces tecum that may be issued for certain students' education records. Specifically, the California Public Employment Relations Board (PERB) has served (or will serve) a subpoena duces tecum for "directory information" about the University's teaching assistants. You ask for our advice on the following:

1. Whether the University would violate FERPA by complying with a subpoena that may be issued by the PERB.
2. Whether there is any other provision contained in FERPA that would allow the University to lawfully provide education records to PERB.
3. Whether FERPA allows notice of a court order or subpoena to be made by publication in campus newspapers or on campus bulletin boards, or would individual letters be required.
4. What is the purpose of § 99.61 of the FERPA regulations?

This Office administers FERPA is responsible for providing technical assistance to educational agencies and institutions regarding issues related to education records.

As you are aware, FERPA is a Federal law that affords parents and eligible students the right to have access to education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. See 20 U.S.C. § 1232g and 34 CFR Part 99. When a student turns 18 years of age or attends an institution of postsecondary education, the student becomes an "eligible student" and all FERPA rights transfer to the student. As explained more fully below, records of teaching assistants are education records under FERPA and may not be disclosed without written consent of the student or unless the disclosure meets one of the exceptions to the prior consent rule under FERPA. Each of your questions is addressed below.

Can the University lawfully comply with a subpoena that may be issued by the PERB?

In your March 15, 1999, letter you state that the PERB may issue a subpoena duces tecum to the University for "the names, departments where employed, and home addresses for several thousand students who are employed in various campus positions, chiefly as teaching assistants". You specifically ask if the University can provide this information under a subpoena for those students who have exercised their right to opt out of the disclosure of "directory information." The PERB wants the information "because it is planning representation elections this Spring at most of the University's nine campuses to determine whether the student employees wish to be exclusively represented by a labor union in their employment relationship with the University."

You indicated in your letter that you are concerned that "compliance with the subpoena duces tecum may violate FERPA." It appears you believe that if the PERB issues the University a subpoena duces tecum, it would not be valid or considered "lawfully issued" because, in your opinion, the PERB may not have the authority under its enabling statute

to issue a subpoena for the teaching assistant's education records. The enabling statute, according to your letter, states that the PERB shall have the authority:

> To hold hearings, subpoena witnesses, administers oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of, any employer's or employee organization's records, books, or paper confidential under statute.

Cal. Gov't Code § 3563 (g).

In your letter, you also state that it "does not appear that FERPA conflicts with state or local law under the facts that I have described—instead, the conflict is between FERPA and a directive (and potentially a subpoena duces tecum) issued by a state agency."

As you aware, Ms. Margo A. Feinberg, counsel to the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, also sent a letter to this Office regarding the potential subpoena duces tecum. In her letter, dated March 19, 1999, she makes the following statements:

> The UAW has filed representation petitions to represent academic student employees in such titles as Teaching Assistants, Readers and Tutors at the University of California campuses. . . . PERB has held several lengthy hearings as to the status of these positions and has determined that they are employees as defined by the Higher Education Employment Relations Act (HEERA) (California Government Code Section 3560, et seq.), and as such have a right to representation.
>
> It is our position first and foremost that any interpretation of HEERA rests with PERB and in

certain circumstances the California courts. Therefore, it is not for the Department of Education to evaluate whether PERB's subpoena is legitimate. We, however, share PERB's view that it has legitimate subpoena power.

As you are aware, FERPA broadly defines the term "education records" as those records that contain information that is directly related to a student and that are maintained by an educational agency or institution or a party acting for the agency or institution. FERPA specifically includes in the term, *those records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.* 34 CFR § 99.3 (b)(3)(ii). You indicated in your letter that teaching assistants are students in attendance at the University and one cannot be a teaching assistant unless one is a student. Therefore, it is our determination that records maintained by the University regarding teaching assistants are "education records" under FERPA.

This Office is not addressing the question of whether the records of readers and tutors are subject to FERPA because sufficient facts were not presented in either your letter or Ms. Feinberg's letter to enable us to determine whether the readers and tutors are students in attendance at the University. However, to the extent a University employs readers and tutors and their employment is contingent upon their being students in attendance at the University, then the same conclusion as teaching assistants would apply and their records would be considered "education records."

With regard to the disclosure of education records, FERPA generally provides that an educational agency or institution may only disclose a student's education record to a third party if the eligible student has given appropriate written consent. 20 U.S.C. § 1232g(b)(1) and (b)(2)(A); 34 CFR § 99.30.

However, FERPA does permit the nonconsensual disclosure of education records in certain limited circumstances, such as when the disclosure is made in compliance with a lawfully issued subpoena or court order. CFR § 99.31(a)(9). A student's decision to be excluded from the disclosure of "directory information" has no bearing on the institution's compliance with a lawfully issued subpoena or court order. That is, an institution may disclose personally identifiable information from education records in compliance with a lawfully issued subpoena or court order regardless whether a student has opted out of the disclosure of directory information (see below).
While FERPA does not specifically define what constitutes a "lawfully issued subpoena," this Office has consistently advised that institutions, in consultation with their counsel, are best able to determine whether a subpoena has been lawfully issued because what would be considered a "lawfully issued subpoena" varies from State to State. In short, we have concluded previously that if a subpoena is issued in compliance with State law, it is "lawfully issued."

Please note that while a "lawfully issued subpoena" or court order may compel disclosure of information, *FERPA* does not require an educational institution to disclose information from a student's education record to anyone other than to the eligible student to whom the records relate. Rather, *FERPA* permits the disclosure of education records without prior written consent in certain limited situations, such as when the records are the subject of a subpoena or court order. In addition, unless the subpoena is a Federal grand jury subpoena or other subpoena issued for a law enforcement purpose, and the subpoena contains a provision that the eligible student must not be informed of the existence of the subpoena, the institution must make a reasonable effort to notify the eligible student in advance of compliance with the subpoena. This permits the eligible student to seek protective

action from the court, such as limiting the scope of the subpoena.

Is there any other provision contained in FERPA that would allow the University to lawfully provide education records to PERB?

Absent prior written consent, no. As mentioned above, records containing information on teaching assistants are education records under FERPA. FERPA does provide that written consent is not needed if the disclosure concerns information the educational agency or institution has designated as "directory information," under the conditions described in 34 CFR § 99.37. See 34 CFR § 99.31(a)(11). The definition lists items that would not generally be considered harmful or an invasion of privacy if disclosed which includes, but is not limited to: a student's name; address; telephone listing; date and place of birth; major field of study; participation in officially recognized activities and sports; weight and height of members of athletic teams; dates of attendance; degrees and awards received; and the most previous educational agency or institution attended. 34 CFR § 99.3 ("Directory information"). Should a school disclose the names and addresses of its teaching assistants under FERPA's directory information exception, the school would also be disclosing, at the same time, the fact that those students are teaching assistants. Under FERPA, the fact that a student is a teaching assistant is not directory information.

Ms. Feinberg states in her letter, however, that the "University has previously released the names and addresses of teaching assistants in identical proceedings." She lists situations or mechanisms in which she states the names of the teaching assistants, tutors, or readers have previously been disclosed or made public. They include printing the names in the course catalog, posting them to the web page of the University, in the tutorial center, in the departments, on the office doors and mailboxes. She also states that the

"individuals when voting in the election release their name as part of the process and obviously assume the University will have to release information to verify if they are currently employees in the bargaining unit." In addition she states: "The University already provides the names and addresses of these academic student employees to other state agencies that cover employment issues, such as the Franchise Tax Board and the Workers' Compensation Appeals Board, as well as to the health insurance providers."

Although Ms. Feinberg states that the University has previously released the names and address of teaching assistants, the nature and circumstances in the situations she describes differ from the disclosure of information to a specific third party, the PERB. Our advice does not relate to the publishing of a teaching assistant's name and address on-campus, action that an individual who is acting as a teaching assistant knows is inevitable as part of his or her teaching curriculum. However, in general, it is our understanding that in circumstances such as those described by Ms. Feinberg, an educational institution would ordinarily have obtained the student's permission to make his or her name and designation as a teaching assistant available to certain students and staff as part of the actual employment application process for teaching assistants.

Also, Ms. Feinberg states that "the University already provides the names and addresses of these academic student employees to other state agencies that cover employment issues, such as the Franchise Tax Board and the Workers' Compensation Appeals Board, as well as to the health insurance providers." We do not have enough information to consider how FERPA applies to these disclosures. For example, we would need to know whether at any point in the employment application process the individual signed a consent form for the release of his or her education records.

As noted previously, records containing a student's name, address, and status as a teaching assistant are considered "education records" because of the teaching assistants' status as students. As such, under the circumstances provided and assuming the absence of any other exception, such as a lawfully issued subpoena, the University would be required to obtain the consent of the teaching assistants prior to disclosing such information to the PERB.

No other provisions in FERPA are applicable to the particular circumstances you have presented. However, it appears from a subsequent communication that the University has taken action to overcome the problem of withholding the teaching assistants addresses for those who opted out. We are pleased that it appears you have resolved the issue. Although you did not elaborate on how the situation was resolved, we offer you the following two suggestions as possible solutions or actions the University may want to consider taking in the event it finds itself in a similar situation in the future.

1. The University could add a consent portion to the teaching assistant's application giving the teaching assistants the option of having their names and addresses released to the PERB for the purpose of elections.

OR

2. The University could volunteer to mail or deliver the literature that PERB presumably would like to have provided to the students via their mailing addresses. This would avoid any disclosures of education records to a third party.

Is notice of a court order or subpoena by publication in campus newspapers and on campus bulletin boards sufficient or are individual letters required?

This Office has consistently interpreted FERPA to require that students be notified in advance of the compliance with a court order or subpoena by individual notice. Notice on campus bulletin boards or in campus newspapers would not be adequate to meet this requirement. In contrast, the requirement in § 99.7 of the FERPA regulations that institutions must annually notify students of their FERPA rights may be provided by individual notice, publication in campus newspapers or on campus bulletin boards.

What is the purpose of § 99.61?

In your letter you ask whether the purpose of § 99.61 is to allow this Office to grant exceptions in appropriate cases to the restrictions that the FERPA places on the release of education records. If so, you then ask whether the University may be granted such an exception.

The purpose of § 99.61 is to require an educational agency or institution that determines that it cannot comply with FERPA, due to a conflict with a State law, to notify this Office regarding such conflict. Once notified, this Office reviews the law and any pertinent interpretations made by the State and provides guidance to the agency or institution regarding its applicability to FERPA. The Department has no authority to grant an exception or waiver to any of the provisions in FERPA.

In sum, compliance with portions of a State law that conflict with FERPA may jeopardize an educational agency or institution's continued eligibility to receive Federal education funds. FERPA provides that the Department may not make funds available to any educational agency or institution that has a policy of denying parents or students their rights under FERPA. Thus, to the extent that a conflict does exist between a State law and FERPA, and the agency or institution has a practice or policy of violating FERPA in order to comply with a State law, the agency or institution would be in jeopardy of losing Department of Education funds.

I trust that the above information is responsive to your inquiry. Should you have any further questions on FERPA, please feel free to contact this Office again.

Sincerely,
LeRoy S. Rooker
Director
Family Policy Compliance Office

430 NE Oak #2
Pullman, WA 99163
Phone/Fax 509-332-8911

September 27, 2002

The Secretary of the U.S. Department of Education,
C/O Family Policy Compliance Office,
U.S. Department of Education,
400 Maryland Avenue SW,
Washington, DC 20202-4605

Dear Sir:

This letter serves as my written complaint filed before the Secretary of the U.S. Department of Education that Washington State University has NOT fully complied with FERPA. Most significant factual evidences were repeatedly stated in my correspondences to the University. I would like to summarize and restate these factual evidences to support my petition as following:

1. I have made requests for my education records of the preliminary examination, the appeals under the Graduate Student Code, and the hearing proceedings. My requests for education records were made before the University officials who have custody of the records and along with the appeal processes since April 19, 2000. To date, I have not yet fully and completely received the requested records as well as documents and evidences justifying the University's decisions. No clarification and explanation was provided.

My requests for education records and internal procedures I have pursued over two years can be summarized as follow:

1). In the appeal letter of April 19, 2000, to Dr. Karen DePauw, Dean of the Graduate School, a request was indicated on page 17. The Graduate School did not provide

sufficient, clear written justification, but gave me incomplete, error, and misleading information as indicated in my communication letters. No record of the examination and appeal was disclosed with the decision.

2). In the May 1, 2000 letter to Dr. Karen DePauw, a request of two items was listed on page 2. The Graduate School did not provide the information. No record was disclosed responsive to this request.

3). In the May 4, 2000 letter to Dr. Karen DePauw, a list of requested information was clearly identified on pages 1 and 2. The Graduate School did not provide me the requested information.

4). In the June 9, 2000 letter to Dr. Herbert Hill, the Graduate School did not directly respond to my concerns rather than brought up other academic issues as I indicated in my letter of July 12, 2000.

5). In the July 12, 2000 letter to Dr. Karen DePauw, there was a list of identifiable education records requested. The Graduate School did not fulfill my request and provided no explanation. No record was released responsive to this request.

6). In the November 6, 2000 letter to Dr. Karen DePauw, there was a list of identifiable education records on page 6. The Graduate School has not yet provided the requested information and records.

7). In the December 14, 2000 letter to Dr. Ronald Hopkins, Interim Provost, there was a full paragraph on page 8 identifying the education records and the previous requests were repeatedly referred to. The Provost did not yet enforce the Interim Provost's order. The Provost also did not acknowledge and respond to my request of July 5, 2002.

8). On February 12, 2001, the Graduate School sent me the documents, but it contained only 14 pages of the requested documents. The rest of documents were NOT at my request and not relevant. The Graduate School provided incomplete documents as I stated in my letter of March 15,

2001 (See the attachment of the letter of July 2, 2002, for a list of released records).

9). In the March 15, 2001 letter forwarded to Dr. Karen DePauw, the requested education records were restated and summarized. They were all in clearly written and identified. My request was forward to Ms. Lori Lamb to fulfill the Graduate School's obligation as indicated in the Graduate School's letter of March 20, 2001. With its letter of March 20, 2001, the Graduate School provided me only the copies of incomplete voting ballots, the front pages of the voting ballots with no comment pages (See the attachment of the letter of July 2, 2002, for a list of the released records). Up to date (September 27, 2002), Ms. Lori Lamb did not provide the rest of the requested information and records as forwarded by Dr. DePauw.

10). In the June 5, 2001 letter to Ms. Lori Lamb, the requests were followed up and indicated in the second paragraph. No record was released responsive to the request follow-up. Moreover, the Ms. Lamb imposed the public record disclosure procedure on my requests for education records and used it as a basis of withholding the requested records.

11). On December 5, 2001, a request for a hearing under WAC 504-21-040 and FERPA was filed. The University did process a hearing until March 4, 2002, or about 90 days later.

12). In the December 7, 2001 letter to Dr. Ronald Hopkins, the requested information and records were not provided. No record was disclosed responsive to this request.

13). On March 20, 2002, Dr. Karen DePauw released additional records of email communications (See the attachment of the letter of March 26, 2002, for a list of the records).

14). On March 27, 2002, the hearing was conducted. The University informed me the decision of April 5, 2002, and claimed that that "the University has fully complied with your request for the release of education records under

FERPA. The University released one additional education record as indicated in the letter of June 22, 2002). However, I believe the majority of the records are still withheld by the University. I believe the hearing was conducted in violation of FERPA and relevant laws and regulations as presented below.

2. By public record disclosure procedures and after the decision of April 5, 2002, was made, the University released some additional records and most released records were not at my request. In response to the public record request of May 31, 2002, on June 24, 2002, the University released the 549 pages of records containing either duplicate copies of the previously released records or the records I did not request for. On July 3 and 15, 2002, the University released additional records of 116 pages. However, the University still withheld significant number of the requested records (See the attachment of the letter of July 2 and 30, 2002, for the list of the released records).

3. I believe the decision of April 5, 2002, was falsified, misled and misrepresented. I believe the decision was NOT made based on constructive evidences presented in the hearing proceedings:

1). Since the SRC was formed in response to my request of December 5, 2001 for the hearing, I believe the SRC has University's legal obligation to conduct the hearing with respect to my request as well as with clear, explicit decision and rationale. The request was for the University to consider six items as indicated in the document of March 21, 2002, and four petitions submitted to the committee. The SRC denied the request item #1 and did not mention any decision and conclusion of the proceedings in regard to the item # 2, 3 and 4 in the letter of April 5, 2002. The committee also did not state whether or not it considered these requests in the hearing proceedings and what rationale behind its decisions was. Mr. Backes and the SRC provided

no clarification and explanation of the decision in responsive to my request of June 22 and July 11, 2002. The committee simply ignored my requests. I believe the SRC did NOT fulfill its obligation and duties in compliance with FERPA.

2) The statement, "we investigated several specific records that may be in existence," implies that the committee did not thoroughly investigate all my requests with respect to the actual academic procedures and the appeals. I believe this implies that the committee made its judgment of "no education record exists" based on its prior perception and strategic plan before the hearing took place. There are factual evidences supporting this implication:

a) The conclusion of item #1, "The committee has determined that no record of evaluator's comments exists now or ever existed," I believe this conclusion was clearly falsified and speculative. The factual evidences are:

(i) On July 3 and 22, 2002, about three months after the decision of April 5, 2002, was made the records of my answers and evaluator's comments on the agricultural marketing portion were released via a public record request procedure, but the rest have not yet been released.

(ii) In his July 4, 2002, letter, Mr. Backes acknowledged that the records were incomplete. In response to my letter of June 22, 2002, he expressed his understanding that the missing pages were being disclosed. This suggests that Mr. Backes did not conduct the hearing in a professional manner.

(iii) In his June 7, 2002, email, Dr. Kenneth Duft indicated that he disposed the requested records. Dr. Duft and the University know that no record can be destroyed or removed prior to the final disposition of the record request.

(iv) In Ms. Sandie Boyce's memorandum of June 7, 2002, Dr. Li-Ming Han was on leave. The on-leave status did not support or suggest the conclusion that no education records exist was true. No documentation and evidence of contact between the University and Drs. Han and Harry Turtle exists.

b) The conclusion of item # 2, "This committee has determined that no record of committee member comments exist now though they may have existed at one time (though in sole possession of the committee members who created the comments)," was misled, speculative and irresponsible. The factual evidence as presented above in 3.2)(a)(i) indicates that the conclusion was falsified, speculative, and misled. This conclusive statement also lacks of supporting evidence from individual faculty members to verify the existence and the disposition of the records.

I observed the existence of the written comments with my own eyes. Where University's employees as either individuals or a committee performed official duties, any public and/or education record was once created as part of their official duties is subject to the Public Disclosure Act and/or FERPA. The individuals were obligated to comply with the relevant laws and regulations.

c) The conclusion of item #4, "This memorandum does not exist and is not maintained by the University," was falsified. In fact, this memorandum does exist and is maintained by the University; it was released by the public record request of May 31, 2002, on July 3, 2002.

d) The conclusions of item #6 and #7, "All records related to this appeal have been released to you...," were misleading unless the University officials actually did nothing in the appeal proceedings and the decisions were made based on their personal beliefs, preferences, and perceptions. If this is a case, then, such records do not exist.

Since Washington State University is a democratic, accredited, well-established and high reputation institution, I do not believe the University made such critical decisions based on no constructive evidence and justification. In fact, I have not received any record directly related to the appeal proceedings. Dr. Karen DePauw and the SRC provided no clarification and explanation responsive in this matter.

3).The SRC's conclusions were in questions. The statements were made with no clear, explicit interpretation of the education records. Such statements, "Much of what you request in your letter to this committee have to do with this lists of records, correspondence and evaluative criteria for which the University does not have a record," and "In most of the cases you cite in your letter, no education record exists," were speculative and not supported by factual evidences and records from the hearing proceedings. I believe the conclusions were based on personal beliefs, perception and preference. How could the committee make a judgment whether an education record was created and maintained, and whether an education record exists? Also, the statement, "no education record exists," does not give any constructive understanding of what records do not exist and what record were created, but not maintained.

4. I believe the conduct of the hearing of March 27, 2002, was NOT appropriate and legitimate because the University clearly failed to comply with 34 CFR 99 in conducting a hearing of March 27, 2002:

1).The hearing of March 27, 2002, did not meet the minimum requirements for conducting a hearing in compliance with 34 CFR 99.22:

a). Mr. Backes was not eligible to conduct a hearing in compliance with FERPA, 34 CFR 99(c). Mr. Backes and Dr. Karen DePauw had a meeting to plan and "determine the appropriate way to respond to" my requests on March 5, 2002, and planned to send off the five emails to me (See the records released with the letter of March 20, 2002). Dr.DePauw's email of March 5, 2002, to Ms. Linda Infranco and Lori Lamb also suggested that Mr. Backes had a meeting with Dr. DePauw and was involved with the withholding the release of the requested records on March 5, 2002.

Dr. Karen DePauw was an officer directly involved in the dispute. These communications were made prior to the hearing of March 27, 2002. No other evidence supports that

Mr. Backes conducted a full, fair hearing in a professional manner before the decision of April 5, 2002, was made. These incidences suggest that Mr. Backes had a direct interest in the outcome of the hearing of March 27, 2002. Therefore, I believe the decision of April 5, 2002, was planned to use as a basis of withholding the records and attempting to close the matter.

b). The hearing of March 27, 2002, did not meet the minimum requirement for conducting a hearing under 34 CFR 99.22(d). The University knows that English language is my second language. By state laws and university ethical obligation, the University shall fully facilitate and accommodate my language disadvantage in presenting evidence to the hearing with a full and fair opportunity. I have an interest to have an attorney and advocates spoken on my behalf at the hearing.

In fact, Mr. Backes by the advice and instruction of the Office of Attorney General (as cited in the hearing of March 27, 2002) imposed a rule that:

"(1) In the March 14, 2002, letter, "An advisor of your choice may accompany you to this hearing, but that person is not allowed to address the committee directly," and

(2) In the March 20, 2002, letter, "The advisor is allowed to give you advice during the hearing, but is not permitted to directly address the committee or advocate on your behalf."

I made a written objection to this rule prior to the hearing and with my petition#1. The University denied my objection and petition #1. The University denied my objection and petition #1. These incidences clearly show that the University did not comply with the regulation and violated the right of the student.

2). The University failed to comply with 34 CFR 99.10(c). The University denied my request before the SRC for a clear written interpretation of the definition of "education record" applied by Washington State University in accordance with WAC 504-21-030 and 34 CFR 99.

Before the hearing, I made a clear written request for an interpretation of the definition of "education records." Mr. Backes stated in the hearing that the committee would not interpret the definition of the education records and provide no explanation in this regard (audio record and hand written notes released on June 10, 2002, can be used to verify this incidence). ALL previous requests for explanation and interpretation were also never answered.

It was my understanding that a committee to conduct a hearing under FERPA has a direct function of "reviews unusual request for information and for assisting in the interpretation of WAC 504-21." The committee denied the University's duty with no clear explanation of the reason why it could not perform the duty. Without considering a clear written interpretation of the definition against my requests of education records, how could the committee make a rationale, professional, and responsible decision that "the University has fully complied with my request"?

5. I also believe the conduct of the hearing of March 27, 2002, was NOT appropriate and legitimate because the University's Student Records Committee (SRC) chaired by Mr.Backes did not have adjudication to conduct a hearing under WAC 504-21-040 because:

1). At the time my request for a hearing was filed before the University on December 5, 2001, the University's Student Records Committee did not exist. The University already has a standing committee for the matter in place and delegates the functions of the Student Records Committee to this standing committee. The committee is known as "Registration and Records Committee" and as indicated in the University Committee Manual.

The University designates three functions of the five to the Registration and Records Committee: (i) "Reviews unusual requests for information and for assisting in the interpretation of WAC 504-21, University Policy on Student Education Records," (ii) "Hears appeals as defined in WAC

504-21-040," and (iii) "Acts in the capacity of a hearing panel as described in the Family Educational Rights and Privacy Act of 1974 and the Privacy Rights of Parents and Students published by HEW on June 17, 1976."

By a public record request, there is no such official record of termination of the Registration and Records Committee; therefore, the committee was still legally and officially effective at the time my requests for education records and a hearing were filed.

In the hearing of March 27, 2002, Mr. Backes denied my petition #1 and stated the Registration and Records Committee was served for the other things, not for my request. I believe such statement was misled and misrepresented. I believe the University has one committee for every student in regard to this matter. I do not believe this University discriminates its practice to single out my case from the others.

Moreover, there is no evidence of official appointment by either the President or the Provost showing that the committee was designated with clear, specific function, authority and duties to conduct a hearing. I believe the University's Student Records Committee (SRC) did not have University authority to conduct such a hearing on behalf of the Registration and Records Committee. With these incidences, therefore, the hearing conducted by the Mr. Backes was NOT legitimate.

2). The RCW 34.05.491 (2) states "the reviewing officer must be one who is authorized to grant appropriate relief upon review." My petition #1 before the committee was denied. Mr. Backes could not provide me a copy of the University written authorization indicating that a member of the committee has authority over the Graduate School and the Office of the Provost before the hearing proceeded. Thus, this incidence indicates that the SRC did not meet the requirement to conduct a review pursuant to RCW 34.05.482 through 34.05.491.

3). On March 11, 2002, I made a written petition for disqualification of a committee member. The University denied my petition and appointed Mr. Richard Backes to conduct the hearing in knowing that he was not qualified to serve on the committee in compliance with FERPA and RCW 34.05. The decision of April 5, 2002, was not legitimate.

6. I believe the University violated the student's right of the Graduate Student Code as stated on page 2, item #1, and failed to comply with RCW 42.17.250.

The University has duty to publish procedures. The University knows that a graduate student has a right to be governed by clearly stated rules, procedures, policies, and regulations. I believe the decision made by the SRC was not legitimate. RCW 42.17.250. In the hearing of March 27, 2002, the University failed to clearly state all rules, procedures and regulations to govern the hearing as well as the proceedings the SRC pursued before the hearing proceeded. Mr. Backes stated that the committee followed the instruction of the Office of Attorney General without publicly spelling out the instruction to the student. This also implies that the committee did not have sufficient knowledge and understanding of rules, procedures, and regulations it was applying. Since the instruction was not publicly disclosed to me before the hearing proceeded, the SRC conducted the hearing with unpublished rules and procedures. The decision has no legal effect.

7. I believe the University and Mr. Backes did not conduct the hearing proceedings of March 27, 2002, with University good faith and integrity. The following factual evidences suggest the University attempted to violate relevant state and federal laws and regulations as well as it own rules, procedures and policies:

1). Dr. Karen DePauw has not fully and completely released the requested records since May 2000 and forwarded

my requests to Ms. Lori Lamb on March 20, 2001. Ms. Lori Lamb released no record. Instead, she imposed a public record request procedure on my education record request as a condition of releasing the requested records.

2). My request for a hearing before the University's Student Records Committee was filed on December 5, 2001 (WAC 504-21-040). The University did not process the hearing proceeding until March 4, 2002, which was three months later.

3). On March 5, 2002, Dr. Karen DePauw and Mr. Richard Backes with other officials had a meeting to plan for conducting the hearing of March 27, 2002. Dr. DePauw emailed the President's secretary (Ms. Linda Infraco) and other officials in this regard, including Ms. Lori Lamb to suggest that "we should not respond individually or collectively to his letters until we hear from Steve."

4). On March 5, 2002, Ms. Kristen Pauli notified me a pending of the release of the requested records due to the hearing. I believe Ms. Pauli knew that both proceedings are independent and the hearing proceeding is not a condition of releasing the clear, explicit education records.

5). On March 20, 2002, Mr. Backes emailed Dr. Karen DePauw "if you (she) had sent off those five emails to him."

6). On March 27, 2002, Mr. Backes conducted a hearing with only one party. I do not believe the hearing proceedings constituted a fair hearing. No evidence shows that the SRC conducted other appropriate proceeding in responsive to my requests.

7). On April 5, 2002, the SRC made its final decision and released one additional record as indicated in my letter of June 22, 2002. No evidence supporting this conclusion was disclosed and assumed non-existent.

8). On May 8, 2002, Senior Assistant Attorney General Antoinette Ursich reaffirmed the decision of April 5, 2002.

9). On May 20, 2002, Ms. Lori Lamb closed the matter based on the SRC's decision of April 5, 2002.

10).By public record request procedures, the University released additional records after April 5, 2002, as stated above.

I believe these evidences suggest the University officials conspired and abused their authority to withhold the records and close the matter regardless of violations of state, federal laws and regulations.

With the factual evidences and the inclusions above, I strongly believe that the University has **NOT** fully complied with my requests for the release of education records under FERPA and other relevant laws and regulations. I believe Washington State University was afforded sufficient time to demonstrate their good faiths and integrity of the decisions in compliance with FERPA. I believe I have pursued all University internal procedures available, but the matter is not resolved. I believe the factual evidences over two years suggest the University intentionally violates the student's right and the Federal Regulation in compliance with FERPA. Therefore, I request the Secretary of U.S. Department of Education enforce the FERPA and order the university to fully and completely comply with FERPA and relevant laws and regulations as well as immediately pursue appropriate procedures to resolve the matter and provide proper remedies.

In such case that any record was removed, discarded or destroyed before the final disposition of the record request, I request you enforce the University be accountable for its obligations and provide proper, fair remedies and compensation. If the University is reluctant to do so, I request you impose the maximum penalty on the University within your authority.

In such case that you find the University has already complied with FERPA in either parts/portions or whole provisions, I request you provide explicit explanation and

clarification as well as analysis and interpretation with constructive evidences and rationales. A written verification and clarification by individuals involved in the examination and appeal processes is necessary where the University claims that a record does not exist or is not maintained by the University.

As America is the most democratic, civilized and great country, I believe the University is upheld to a high standard of ethical and legal conducts for official decisions and its integrity. The enforcement of the federal law and regulation will ensure the rights of citizen and international students are equally, fairly protected and well-respected. The University's academic privilege shall be properly used with full professional responsibility and accountability. The official decisions shall be made upfront and opened with explicit, constructive evidences and rationales.

I request you consider my request in a timely manner. I also request you provide explicit explanation and rationale with your decision. I request you notify me when I will receive your review and decision if this will take time longer than 30 days. I believe all relevant correspondences were copied to you with this petition. If you require additional information, please feel free to directly obtain from the University or contact me in writing.

Finally, I request you inform me all other procedures available in regard to this matter.
Thank you very much for your consideration.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

430 NE Oak Street, Apt. 2
Pullman, Washington 99163

May 31, 2002

Ms. Lori Lamb
Assistant Vice President for Personnel and Administration,
Washington State University,
Pullman, WA 99164-1045

Dear Ms. Lamb:

Enclosed is my written public records request. RCW 42.17. WAC 504-44.

Where it is required by law, or necessary, applicable, and/or appropriate, this letter also serves as my written consent before Washington State University to disclose any education record and personally identifiable information from my education records as public records served upon the enclosed public record request. The education record refers to the records defined by 34 CFR 99 and WAC 504-21. The public record refers to the records defined by RCW 42.17 and WAC 504-44.

The purposes of the disclosure are: to be part of any adjudicative proceeding and/or judicial review as of my interest and discretion; to inspect and review for accuracy and truthfulness of information created, used and maintained by Washington State University; and to validate the professional integrity and lawfulness of the state agency's actions and decisions. 34 CFR 99.30. If any question, concern or further clarification of my written consent, Washington State University shall immediately contact me in writing.

The requested records DO NOT include my written correspondence with the University.

In addition, I request the University provide a written confirmation of the list of the existing records and its

completeness and accuracy of the released records by all individual faculty members and University officials involved/participated in the matter of the preliminary examinations, the appeals, and the release of the requested education/public records.

In such case that the requested record cannot be released, for each particular record, I request the University provide a clear, explicit written statement of specific exemption and how it applies to the record withhold. If a record is not available to release, I request the University provide an explanation of reasons and incidences. The explanation includes clear, explicit and direct information to the following:

1). Whether or not the record was created, obtained and used by the University officials in the preliminary examination and the appeal processes.

2). Whether or not the record actually maintained in some forms or means by the University and individual faculty members acting in the capacity of committee proceedings.

3). Whether or not the record was missing, discarded, destroyed, and/or removed from the files.

4). Whether or not the University has obligation to create and maintain the record for the student's inspection and review in compliance with FERPA, RCW 42.17, WAC 504-44, WAC 504-21 and other relevant University policies and regulations as well as to be part of further appeals/contests by the student.

In such case that the University determines a particular requested record does not exist, I request the University provide explanation and incidence used as a basis of such judgment. Also, I request the University provide a written confirmation by all individual faculty members and University officials involved/participated in the related proceeding or procedure that such information was never created, obtained and used by the University officials in the preliminary examination and the appeal proceedings. In such

case that the record was cited by the faculty/University officials, I request a written clarification and explanation of why the officials cited a non-existent record as the basis of the University decision.

In such case that requested education/public records were discarded, removed or missing from the files or from what the CGSRR, the Dean of the Graduate School and the Interim Provost actually reviewed at the time of their deliberations and rendering the University decisions, either parts/portions or whole records, I request the University provide details and nature of such records and incidences including date, time, place, and names of the officials who had custody of the records when the incidences took place.

I request for a response by you to my request in a timely manner. I also request you notify me when, where and how I will receive the copies of public records. If there is any established procedure I have to follow in this regard, please assist me in a timely manner. In such case that this will take time longer than 15 working days to obtain the copies of the records, I request you provide a reasonable estimate of time that the University will completely release the public record request with a clear, explicit basis of the estimate. You may contact me for any additional clarification.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope.
cc: The Provost
The President
The Regents
The Office of Washington State Governor

List of Description of the requested Public Records

The term, "records," is referred to "public records," as defined by RCW 42.17, WAC 504-44, including any writing in all means or recording **any form of communication or representation**. A writing includes, but not limit to, conventional letters, memoranda, emails, as well as **hand written** notes of interview and meeting. The requested records DO NOT include my written correspondence with the University.

1. In regard to Mr. Benjapon Sakkarapope's preliminary examination process ended on February 11, 2000, all records include, but not limit to, the following:
    a. All records communicating among the members of the advisory committee--Dr. Kenneth Duft, Dr. Hong Holly Wang, Dr. Frederick Inaba, Dr. John L. Kling, Dr. Hao Zhang, Dr. Li-Ming Han and Dr. Phillip Wandschneider from May 1999 to February 11, 2000. The records also include, but not limit to, all emails or other means or forms of communication or representation by Dr. Kenneth Duft and the committee members in regard to my written appeal of January 31, 2000.
    b. All records indicate all rules, justifiable academic procedures, and regulations the advisory/examination committee used as the basis of the academic evaluation of the preliminary examination from the beginning to the end of the examination process, May 1999 to February 11, 2000.
    c. All records of the meetings of the advisory/examination committee in regard to the preparation and evaluation of the preliminary examinations from May 1999 to February 11, 2000. The meetings include, but not limit to, the

meetings of October 19, 1999, January 21, 2000 and February 11, 2000.

d. The actual content and format of the preliminary examination used by the advisory/examination committee, the IIDP, the CGSRR and the Graduate School as the basis of the agency actions and decisions.

e. The preliminary examination questions, the student's answers with the evaluator's comments/grades, the answer keys and the criteria and evaluation of passing or failing/satisfactory or unsatisfactory results. The evaluators' overall comments and academic criteria for overall performance--passing or failing/poor. The preliminary examination refers to the examinations dated January 12 and 14 and February 11, 2000. The records were also cited in the committee members' memorandums in response to Dr. Hill's email dated May 5, 2000. The records include, but not limit to, hand written notes of prepared questions for the oral examination, the hand written notes of interviewing, questioning and the student's responses as well as the hand written notes of the Representative's observation during the oral preliminary examination dated February 11, 2000.

f. All comment pages of voting ballots of the preliminary examination dated February 11, 2000.

g. All records of applicable rules and procedures governing the preliminary examination which the advisory committee, the IIDP and the Graduate School have obligations to follow other than the following:

    i. The Individual Interdisciplinary Doctoral Program at Washington State University Faculty/Student Handbook, Rev. Jan. 1999.

ii. The Graduate Student Code, January 1998 and October 1999.
iii. The Graduate School Policies and Procedures, 1997-98 and 1998-99

2. As cited by Dr. Karen DePauw in her decision of April 26, 2000, all records used by Dr. Karen DePauw in rendering the decision and determine that I had failed the preliminary examination for the second time. The records indicate that I scheduled the first and second attempt of the preliminary examination.
3. As cited by Dr. Karen DePauw in her decision of April 27, 2000, all published rules and university policy applied by Dr. Karen DePauw that "the policies established by the Graduate Faculty at Washington State University, students who have failed the preliminary examination and are not recommended for a second examination can no longer pursue work leading to the doctorate. Accordingly, I .....being dropped from Washington State University...."
4. As cited by Dr. Karen DePauw in her decision of October 10, 2000, that "The committee met with selected faculty members and administrators knowledgeable of the particulars of your case," a name list of the selected faculty members and administrators, and all records of the interviews and the meetings.
5. As cited by Dr. Karen DePauw in her decision of October 10, 2000, that "The CGSRR has the right and responsibility to structure their role in the appeal process," all published rules and regulations in regard to the rights and responsibilities of the CGSRR. All applicable-published guideline, manual or other University documents that the CGSRR used as the basis and/or guideline of conducting the adjudicative proceedings and rendering the recommendation of September 19, 2000.
6. As cited by Dr. Karen DePauw in her decision of October 10, 2000, that "The committee members have provide

sufficient justification and rationale in support of their evaluation of your performance on the preliminary examination," all documentations referred by Dr. Karen DePauw as the "sufficient justification and rationale."

7. As cited by Dr. Karen DePauw in her decision of October 10, 2000, that "I have reviewed the relevant documents in the official files held in the Graduate School and by the Individual Interdisciplinary Doctoral Program (IIDP), the materials used in the decision made by Herb Hill ...," all records referred by Dr. Karen DePauw as the "relevant documents" and "the materials used in the decision made by Dr. Herb Hill." The requested records do not include the documents already mailed with the letter of February 12, 2001, and as indicated in my letter of March 15, 2001.
8. As cited by Dr. Karen DePauw in her decision of October 10, 2000, that "In my review of your case, I find insufficient evidence to lead me to a different conclusion that reached by the IIDP Graduate Coordinator and the CGSRR," all records referred by Dr. Karen DePauw as "insufficient evidence."
9. As cited by Dr. Karen DePauw in her decision of October 10, 2000, that "The graduate faculty members (advisory committee members) have not only the authority but also the responsibility to provide their individual and collective academic judgment in academic matter...," all records that the advisory committee members used to support their "academic judgment" and submitted to and used by Dr. Karen DePauw in the appeal proceedings and rendering the decision of October 10, 2000.
10. As Dr. Karen DePauw's decision of October 10, 2000, all records of the published rules and policies as applied by Dr. Karen DePauw that "Therefore, you will no longer be able to pursue a doctoral degree at Washington State University."
11. As cited by the CGSRR in the decision of September 19, 2000, that "the CGSRR unanimously agrees that there is no substantive basis for reversing the decision of Mr.

Sakkarapope's advisory committee," all records referred and used by the CGSRR as "substantive basis" used by the advisory committee's decision.

12. As cited by the CGSRR in the decision of September 19, 2000, that "The advisory committee determined that Mr. Sakkarapope did not meet these fundamental requirements and is not prepared to enter the rigors of a Ph.D. program," all records of the advisory committee's determination and judgment referred to and used by the CGSRR as to determine that "this decision is fundamentally correct."
13. As cited by Dr. Ronald H. Hopkins in the decision of February 1 and December 13, 2001, that "I find no irregularity in the procedures used by the Graduate School," all documentations of procedures referred and used by Dr. Hopkins as the basis of his review and judgment of the "irregularity."
14. As cited by Dr. Ronald H. Hopkins in the decision of February 1, 2001, that "You were afforded due process for this review of an academic decision," all documentations referred by Dr. Hopkins as "due process."
15. As cited by Dr. Ronald H. Hopkins in the decision of December 13, 2001, all records of the basis of the judgment that "They were determined to be unsupported."
16. As cited by Dr. Ronald H. Hopkins in the decision of December 13, 2001, all applicable University rules and procedures in regard to the time limitation of a request for reconsideration.
17. **All** records communicating between the officials of the Office of Attorney General and Dr. Karen DePauw, Dr. Herbert Hill, Dr. Ronald Hopkins, the CGSRR and other officials of Washington State University in relating to **my appeals of the preliminary examination under the adjudication and responsibilities of the Graduate Student Code** from April 19, 2000, to the current date.

The requested records do not include the copies of emails sent with the letter of March 20, 2002.

18. As cited by Dr. R. Alan Black in his memorandum of May 11, 2000, all documentations referred as "the guidelines provided by the Graduate School."
19. As cited by Dr. R. Alan Black in his memorandum of May 11, 2000, all records of incidences referred as "on several occasions during the oral examination, I was able to detect obvious errors in fact or analysis by the candidate in response to questioning."
20. As cited by Dr. Frederick S. Inaba in his memorandum of May 11, 2000, all records of incidences referred as "Mr. Sakkarapope's shortcomings on the written exam..."
21. As cited by Dr. Kenneth Duft in his memorandum (no date) to Dr. Herb Hill's email of May 5, 2000, a name/title list of the "personal copies of text books and related materials."
22. As cited by Dr. Kenneth Duft in his memorandum (no date) to Dr. Herb Hill's email of May 5, 2000, that "Mr. Sakkarapope had earlier failed several portions of the written qualifying examinations," all records of the examinations referred as "several portions of the written qualifying examinations."
23. As cited by Dr. Holly Wang in her memorandum of May 12, 2000, to Dr. Herb Hill, that "The format is not significantly different from what he was informed a few months before the exam," all records referred as the "format" of the examination.
24. As cited by Dr. Li-Ming Han in her memorandum of June 5, 2000, to Dr. Herb Hill, a record of Dr. Duft's memorandum dated January 26, 2000.
25. All records of materials and reviews used by Dr. Karen DePauw as the Chair of the IIDP from February 15 to March 29, 2000.
26. All records of materials and reviews used by the Graduate School to make the decisions of May 19, June 28, July 14, October 10, and November 13, 2000. The requested

recor[illegible]do not include the documents already mailed with the l[illegible] of February 12, 2001, and as indicated in my letter of March 15, 2000. Letters, hand written notes, emails, memorandums, and phone interview/calls, as well as all other types of communications among Dr. Kenneth Duft, the student, Dr. Herbert Hill, the CGSRR, the examination/advisory committee members, Dr. Ronald Hopkins, Dr. Karen DePauw, university administrators and officials, and other faculty members in regard to obtaining information, opinions, comments, and recommendations to form Dr. Hill's and Dr. Karen DePauw's final academic decisions of the preliminary examination and the appeals. If comments, opinions, and recommendations were not made in writing, specify the names of parties, date, time, and the contents/opinions/comments/ recommendations in regard to the preliminary examination and the appeals.

27. All records of materials and reviews used by the CGSRR to make the decisions of September 19, 2000. If different from item #26, letters, hand written notes, emails, memorandums, and phone interview/calls, as well as all other types of communications among Dr. Kenneth Duft, the student, Dr. Herbert Hill, the CGSRR, the examination/advisory committee members, Dr. Ronald Hopkins, Dr. Karen DePauw, university administrators and officials, and other faculty members in regard to obtaining information, opinions, comments, and recommendations to form the CGSRR's academic decisions of the preliminary examination and the appeals. If comments, opinions, and recommendations were not made in writing, specify the names of parties, date, time, and the contents/opinions/comments/ recommendations in regard to the preliminary examination and the appeals.
28. All records of materials and reviews used by the Interim Provost, Dr. Hopkins, to make his decisions of February 1 and December 13, 2001. If different from item #26 and #27, letters, hand written notes, emails, memorandums,

and phone interview/calls, as well as all other types of communications among Dr. Kenneth Duft, the student, Dr. Herbert Hill, the CGSRR, the examination/advisory committee members, Dr. Ronald Hopkins, Dr. Karen DePauw, university administrators and officials, and other faculty members in regard to obtaining information, opinions, comments, and recommendations to form the Interim Provost's academic decisions of the preliminary examination and the appeals. If comments, opinions, and recommendations were not made in writing, specify the names of parties, date, time, and the contents/opinions/comments/ recommendations in regard to the preliminary examination and the appeals.

29. All other meetings, if exists, in regard to the advisory/examination committee's conducts of the preliminary examination, their preparation and evaluations; Dr. Hill's, the CGSRR's, Dr. Hopkins' and Dr. DePauw's reviews of the appeals and the academic evaluation of the preliminary examination with date, time, place, names of participants, and the memorandum, opinions, recommendations, comments, and evaluations, including all hand written notes. Clearly identify what conclusion/agreements/rules, and whose opinions, recommendations, comments, and evaluations by individual participants were made in the meetings.
30. All advisory committee members' memorandums in responding to Dr. Hill's email dated May 5, 2000, with official date received by the Graduate School. If they were stamped on the envelopes and/or on the back side, I request the University release the copies of the date-stamped pages.
31. As Mr. Sakkarapope's appeal of April 19, 2000, before the University was to academically and professionally re-evaluate the result of academic judgment, all records of proceedings the University afforded the student against academic misjudgment.

32. **All** records communicating among the faculty members and officials of Washington State University, Dr. Karen DePauw, Dr. Herbert Hill, Dr. Ronald Hopkins, the CGSRR, and Ms. Lori Lamb in relating to **my requests for education records in compliance with FERPA** from April 19, 2000, to the current date.
33. University policies and academic procedures in conducting an academic examination and appeal.
34. University policies, procedural rules for formal appeal proceedings under the Adjudication of Rights and Responsibilities, the Graduate Student Code, other than WAC 504-04.
35. Applicable guideline, manual, University policies and procedural rules indicating responsibilities and obligations of conducting official duties, and in regard to misjudgment in making University' decisions and actions.
36. Applicable guideline, manual, University policies and procedural rules for a University's committee to conduct a hearing.
37. All applicable-published guideline, manual or other University documents that the Interim Provost used as the basis and/or guideline of conducting the adjudicative proceedings and rendering the decisions of February 1 and December 13, 2001.
38. Applicable University policies and procedural rules for conducting and resolving academic complaints and appeals, particularly for the IIDP and graduate students.
39. As adoption of RCW 42.17.290, University policies, rules and procedures of records retention and disposition in regard to the records of the preliminary examination of the IIDP and the appeals under the Adjudication of Rights and Responsibilities, the Graduate Student Code.
40. An updated name list of the Registration and Records Committee and its functions.
41. As cited in the letters of March 14 and 20, 2002, all applicable-published guideline, manual or other

University documents cited and used by Mr. Richard Backes that (1) In the March 14, 2002, letter, "An advisor of your choice may accompany you to this hearing, but that person is not allowed to address the committee directly," and (2) In the March 20, 2002, letter, "The advisor is allowed to give you advice during the hearing, but is not permitted to directly address the committee or advocate on your behalf."

42. All other records that the University maintains under RCW 34.05.476 in regard to Mr. Sakkarapope's formal appeals of the preliminary examination.

s/ *B. Sakkarapope*
Signature